



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, शनिवार, 5 जुलाई, 2014 / 14 आषाढ़, 1936

हिमाचल प्रदेश सरकार

HIGH COURT OF HIMACHAL PRADESH SHIMLA -171001

NOTIFICATION

Shimla, the 1st July, 2014

No. HHC/GAZ/ 14-301/08-Part.—Hon'ble the Chief Justice has been pleased to grant 07 days' earned leave w.e.f. 2.7.2014 to 8.7.2014 in favour of Sh. Nitin Mittal, Civil Judge (Junior Division)-cum-JMIC, Chopal, District Shimla, H.P.

Certified that Sh. Nitin Mittal is likely to join the same post and at the same station from where he proceeds on leave, after expiry of the above period of leave.

Also certified that Sh. Nitin Mittal would have continued to hold the same post of Civil Judge (Junior Division)-cum-JMIC, Chopal, District Shimla, H.P., but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH SHIMLA - 171001

NOTIFICATION

Shimla, the 1st July, 2014

No. HHC/GAZ/14-196/89-III-Part.—Hon'ble the Chief Justice has been pleased to grant 25 days' earned leave w.e.f. 7.7.2014 to 31.7.2014 with permission to prefix Sunday falling on 6.7.2014 in favour of Shri K.K. Sharma, Additional District and Session Judge (I), Kangra at Dharamshala, H.P.

Certified that Shri K.K. Sharma is likely to join the same post and at the same station from where he proceeds on leave, after expiry of the above period of leave.

Also certified that Shri K.K. Sharma would have continued to hold the same post of Additional District and Sessions Judge (I), Kangra at Dharamshala, H.P., but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA - 171001

NOTIFICATION

Shimla, the 1st July, 2014

No. HHC/Admn. 6 (23)/74-XV.—Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 2 (32) of Chapter 1 of H.P. Financial Rules, 2009 has been pleased to declare Additional District and Sessions Judge (II), Kangra at Dharamshala, H.P. as Drawing and Disbursing Officer in respect of the Court of Additional District and Sessions Judge (I), Kangra at Dharamshala also the Controlling Officer for the purpose of salary, T.A. etc. in respect of establishment attached to the aforesaid Court under Major Head "2014- Administration of Justice" during the earned leave period of Sh. K.K. Sharma, Additional District and Sessions Judge (I), Kangra at Dharamshala w.e.f. 7.7.2014 to 31.7.2014 with permission to prefix Sunday falling on 6.7.2014 or until he returns from leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA – 171001**NOTIFICATION***Shimla, the 1st July, 2014*

No. HHC/Admn. 6 (23)/74-XV.—Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 2 (32) of Chapter 1 of H.P. Financial Rules, 2009 has been pleased to declare Additional District and Sessions Judge, Chamba, H.P. as Drawing and Disbursing Officer in respect of the Court of District and Sessions Judge, Chamba and also the Controlling Officer for the purpose of salary, T.A. etc. in respect of establishment attached to the aforesaid Court under Major Head "2014-Administration of Justice" during the earned leave period of Sh. R. K. Sharma, District and Sessions Judge, Chamba w.e.f. 14.7.2014 to 24.7.2014 with permission to prefix Sunday falling on 13.7.2014 or until he returns from leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH SHIMLA - 171001**NOTIFICATION***Shimla, the 1st July, 2014*

No. HHC/GAZ/14-202/90-II.—Hon'ble the Chief Justice has been pleased to grant 11 days' earned leave w.e.f. 14.7.2014 to 24.7.2014 with permission to prefix Sunday falling on 13.7.2014 in favour of Shri R.K. Sharma, District and Session Judge, Chamba, H.P.

Certified that Shri R.K. Sharma is likely to join the same post and at the same station from where he proceeds on leave, after expiry of the above period of leave.

Also certified that Shri R.K. Sharma would have continued to hold the same post of District and Sessions Judge, Chamba, H.P., but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION***Shimla-2, the 19th June, 2014*

No: Sharm (A) 7-1/2005 (Awards) L-D/Shala.—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court D/Shala on the website of the Department of Labour & Employment of the Government of Himachal Pradesh.

Sr. No.	Case No.	Title of the Case	Date of Award
1.	38/2014	S/Shri Gandhi Ram V/s E.E.HPPWD, J/Nagar.	02-04-2014
2.	39/2014	Pyar Chand V/s -do-	02-04-2014
3.	40/2014	Sukh Dev V/S -do-	02-04-2014
4.	41/2014	Shesh Ram V/S -do-	02-04-2014
5.	43/2014	Duni Chand V/s -do-	02-04-2014
6.	44/2014	Maya Devi V/s -do-	02-04-2014
7.	45/2014	Guddi Devi V/s -do-	02-04-2014
8.	49/2014	Inder Singh V/s -do-	02-04-2014
9.	66/2014	Matwar V/s -do-	02-04-2014
10.	26/2014	Ramesh Chand V/s -do-	02-04-2014
11.	30/2014	Bidya Devi V/s -do-	02-04-2014
12.	84/2012	Van Mazdoor Sangathan V/s Principal Chief Cons. of Forest.	03-04-2014
13.	243/2012	Baldev Chand V/s G.M. Bharti telenet.	03-04-2014
14.	34/2014	Sanjay Kumar V/s Employer KKK Hydro power.	04-04-2014
15.	91/2014	Rishi Kant V/s M/s Tigaksha Metalics	10-04-2014
16.	92/2014	Ramti Raman V/s -do-	10-04-2014
17.	210/2013	Partap Singh V/s E.E.HPPWD, Dharampur	12-04-2014
18.	211/2013	Onkar Chand V/s -do-	12-04-2014
19.	209/2013	Raj Kumar V/s -do-	12-04-2014
20.	212/2013	Sheela Devi V/S -do-	12-04-2014
21.	33/2012	Praveen Kumar V/s -do-	12-04-2014
22.	08/2012	Jagdish Chand V/s -do-	12-04-2014
23.	50/2012	Sanjay Kumar V/s -do-	12-04-2014
24.	37/2012	Fulmu Devi V/s -do-	12-04-2014
25.	358/2012	Dila Ram V/s -do-	12-04-2014
26.	21/2012	Alankrit V/s -do-	12-04-2014
27.	25/2012	Gian Chand V/s -do-	12-04-2014
28.	15/2014	Surat Singh V/s -do-	12-04-2014
29.	24/2014	Purvia Ram V/s -do-	12-04-2014
30.	215/2013	Beli Ram V/s E.E. HPPWD Ghumarwin	12-04-2014
31.	227/2012	Bhichhi Devi V/s E.O. M.C. Mandi	16-04-2014
32.	93/2014	Jaswant Kaur V/s M/s Tigaksha Metalics	15-04-2014
33.	339/2012	Budhi Devi V/s Secty. Forest	16-04-2014
34.	57/2013	Maghu Ram V/s D.F.O. Killer	17-04-2014
35.	11/2014	Nathu Ram V/s M.D. M/s Tigaksha Metalics	29-04-2014
36.	103/2014	Yash Pal V/s Factory Manager M/s AK	29-04-2014
37.	45/2013	Ghanshyam V/s D.F.O. Suket	30-04-2014
38.	58/2014	Jai Singh V/s E.E.HPPWD J/Nagar	01-05-2014
39.	118/2013	Pradhan HP State Handi V/s M.D. HP State Handicraft.	01-05-2014
40.	50/2013	Mohan Lal V/s E.E. HPPWD, Killer	01-05-2014
41.	79/2013	Kishori Lal V/s E.E. HPPWD, Pangi	01-05-2014
42.	04/2013	Bir Singh V/s E.E. HPPWD, Gohar	05-05-2014
43.	125/2011	Renu Mehra V/s Principal DAV Sr.Sec.School	05-05-2014
44.	53/2013	Hem Kund V/s D.F.O. Suket, S/Nagar	12-05-2014
45.	54/2013	Hem Raj V/s D.F.O. Suket, S/Nagar	12-05-2014
46.	194/2013	Guddi Devi V/s E.E. HPPWD J/Nagar	15-05-2014
47.	162/2013	Vijay Pal V/s -do-	15-05-2014
48.	188/2013	Santosh Kumar V/s -do-	15-05-2014

49.	203/2013	Krishan Singh V/s -do-	15-05-2014
50.	204/2013	Hoshiyar Singh V/s -do-	15-05-2014
51.	134/2013	Ghanshshyam Singh V/s -do-	15-05-2014
52.	143/2014	Baldev Kumar V/s CSK. HPKVV Palampur	20-05-2014
53.	146/2014	Pawan Kumar V/s -do-	20-05-2014
54.	153/2014	Birbal V/s -do-	20-05-2014

By order,
(R. D. DHIMAN),
Pr. Secretary (Labour & Employment).

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 38/2014

Shri Gandhi Ram s/o Shri Puran Chand, r/o Village Changher, P.O. Khaddar, Tehsil Joginder
Nagar, Distt. Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, Distt. Mandi, H.P.
..Respondent.

02-04-2014 Present : None for the petitioner.
Sh. B.S. Barwal, Executive Engineer, B&R Division HPPWD,
Joginder Nagar (respondent) with Sh. Sanjeev Singh Rana, A.D.A.

The respondent/Executive Engineer has made the below given statement in the Court today
on oath:-

“ The claimant / petitioner has not turned up despite intimation. As per the information
received by me from the field staff, the petitioner is not interested to come to the Court and
pursue the case since he/she is still working and the muster rolls are being issued in his/her
favour regularly.

RO & AC

P.J.”

Sd/-

02-04-2014

2. In view of the above noted statement, I have no hesitation to conclude that no artificial
breaks in service (as per the reference) were given to the petitioner by the respondent. Parties to
bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary
action at its end.

5. Be consigned to the Records after due completion. Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 39/2014

Shri Pyar Chand s/o Shri Sardaru Ram, r/o Village Passal, P.O. Chauntra, Tehsil Joginder Nagar, Distt. Mandi, H.P. .. Petitioner.

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, Distt. Mandi, H.P. ..Respondent.

02-04-2014 Present : None for the petitioner.
Sh. B.S. Barwal, Executive Engineer, B&R Division HPPWD,
Joginder Nagar (respondent) with Sh. Sanjeev Singh Rana, A.D.A.

The respondent/Executive Engineer has made the below given statement in the Court today on oath:-

“ The claimant / petitioner has not turned up despite intimation. As per the information received by me from the field staff, the petitioner is not interested to come to the Court and pursue the case since he/she is still working and the muster rolls are being issued in his/her favour regularly.

RO & AC

P.J.”

Sd/-

02-04-2014

2. In view of the above noted statement, I have no hesitation to conclude that no artificial breaks in service (as per the reference) were given to the petitioner by the respondent. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 40/2014

Shri Sukh Dev s/o Shri Kamapa Ram, r/o Village Baragra, P.O. Chauntra, Tehsil Joginder Nagar, Distt. Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, Distt. Mandi, H.P.

..Respondent.

02-04-2014 Present : None for the petitioner.
 Sh. B.S. Barwal, Executive Engineer, B&R Division HPPWD,
 Joginder Nagar (respondent) with Sh. Sanjeev Singh Rana, A.D.A.

The respondent/Executive Engineer has made the below given statement in the Court today on oath:-

“ The claimant / petitioner has not turned up despite intimation. As per the information received by me from the field staff, the petitioner is not interested to come to the Court and pursue the case since he/she is still working and the muster rolls are being issued in his/her favour regularly.

RO & AC

P.J.”

Sd/-

02-04-2014

2. In view of the above noted statement, I have no hesitation to conclude that no artificial breaks in service (as per the reference) were given to the petitioner by the respondent. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
 INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 41/2014

Shri Shesh Ram s/o Shri Duni Ram, r/o Village Bragra, P.O.Chautra, Tehsil Joginder Nagar,
 Distt. Mandi, H.P.

*..Petitioner.**Versus*

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, Distt. Mandi, H.P.

..Respondent.

02-04-2014 Present : None for the petitioner.
Sh. B.S. Barwal, Executive Engineer, B&R Division HPPWD,
Joginder Nagar (respondent) with Sh. Sanjeev Singh Rana, A.D.A.

The respondent/Executive Engineer has made the below given statement in the Court today on oath:-

“ The claimant / petitioner has not turned up despite intimation. As per the information received by me from the field staff, the petitioner is not interested to come to the Court and pursue the case since he/she is still working and the muster rolls are being issued in his/her favour regularly.

RO & AC

P.J.”

Sd/-

02-04-2014

2. In view of the above noted statement, I have no hesitation to conclude that no artificial breaks in service (as per the reference) were given to the petitioner by the respondent. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 43/2014

Shri Duni Chand s/o Shri Sanichru Ram, r/o Village Ladwan, P.O. Pipli, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, Distt. Mandi, H.P. *..Respondent.*

02-04-2014 Present : None for the petitioner.
Sh. B.S. Barwal, Executive Engineer, B&R Division HPPWD,
Joginder Nagar (respondent) with Sh. Sanjeev Singh Rana, A.D.A.

The respondent/Executive Engineer has made the below given statement in the Court today on oath:-

“ The claimant / petitioner has not turned up despite intimation. As per the information received by me from the field staff, the petitioner is not interested to come to the Court and pursue the case since he/she is still working and the muster rolls are being issued in his/her favour regularly.

RO & AC

P.J.”

Sd/-

02-04-2014

2. In view of the above noted statement, I have no hesitation to conclude that no artificial breaks in service (as per the reference) were given to the petitioner by the respondent. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 44/2014

Smt. Maya Devi w/o Shri Naresh Kumar, r/o Village Panertu, P.O. Panjalag, Tehsil Joginder Nagar, Distt. Mandi, H.P.
..Petitioner.

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, Distt. Mandi, H.P.
..Respondent.

02-04-2014 Present : None for the petitioner.
Sh. B.S. Barwal, Executive Engineer, B&R Division HPPWD,
Joginder Nagar (respondent) with Sh. Sanjeev Singh Rana, A.D.A.

The respondent/Executive Engineer has made the below given statement in the Court today on oath:-

“ The claimant / petitioner has not turned up despite intimation. As per the information received by me from the field staff, the petitioner is not interested to come to the Court and pursue the case since he/she is still working and the muster rolls are being issued in his/her favour regularly.

RO & AC

P.J.”

Sd/-

02-04-2014

2. In view of the above noted statement, I have no hesitation to conclude that no artificial breaks in service (as per the reference) were given to the petitioner by the respondent. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 45/2014

Smt. Guddi Devi w/o Shri Sadhu Ram, r/o Village Tobri, P.O. Dalag, Tehsil Joginder Nagar, Distt. Mandi, H.P.

..Petitioner.

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, Distt. Mandi, H.P.

..Respondent.

02-04-2014 Present : None for the petitioner.
Sh. B.S. Barwal, Executive Engineer, B&R Division HPPWD,
Joginder Nagar (respondent) with Sh. Sanjeev Singh Rana, A.D.A.

The respondent/Executive Engineer has made the below given statement in the Court today on oath:-

“ The claimant / petitioner has not turned up despite intimation. As per the information received by me from the field staff, the petitioner is not interested to come to the Court and pursue the case since he/she is still working and the muster rolls are being issued in his/her favour regularly.

RO & AC

P.J.”

Sd/-

02-04-2014

2. In view of the above noted statement, I have no hesitation to conclude that no artificial breaks in service (as per the reference) were given to the petitioner by the respondent. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 49/2014

Shri Inder Singh s/o Shri Ganesh, r/o Village Mortan, P.O. Bharol, Tehsil Joginder Nagar,
Distt. Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, Distt. Mandi, H.P.
..Respondent.

02-04-2014 Present : None for the petitioner.
Sh. B.S. Barwal, Executive Engineer, B&R Division HPPWD,
Joginder Nagar (respondent) with Sh. Sanjeev Singh Rana, A.D.A.

The respondent/Executive Engineer has made the below given statement in the Court today on oath:-

“ The claimant / petitioner has not turned up despite intimation. As per the information received by me from the field staff, the petitioner is not interested to come to the Court and pursue the case since he/she is still working and the muster rolls are being issued in his/her favour regularly.

RO & AC
Sd/-

P.J.”
02-04-2014

2. In view of the above noted statement, I have no hesitation to conclude that no artificial breaks in service (as per the reference) were given to the petitioner by the respondent. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 66/2014

Shri Matwar s/o Shri Dayal Singh, r/o Village Rash, P.O. Panjalag, Tehsil Joginder Nagar,
Distt. Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, Distt. Mandi, H.P.
..Respondent.

02-04-2014 Present : None for the petitioner.
Sh. B.S. Barwal, Executive Engineer, B&R Division HPPWD,
Joginder Nagar (respondent) with Sh. Sanjeev Singh Rana, A.D.A.

The respondent/Executive Engineer has made the below given statement in the Court today on oath:-

“ The claimant / petitioner has not turned up despite intimation. As per the information received by me from the field staff, the petitioner is not interested to come to the Court and pursue the case since he/she is still working and the muster rolls are being issued in his/her favour regularly.

RO & AC

P.J.”

Sd/-

02-04-2014

2. In view of the above noted statement, I have no hesitation to conclude that no artificial breaks in service (as per the reference) were given to the petitioner by the respondent. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 26/2014

Shri Ramesh Chand s/o Shri Budhi Singh, r/o Village Barnod, P.O.Golwan, Tehsil Joginder
Nagar, Distt. Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, Distt. Mandi, H.P.
..Respondent.

02-04-2014 Present : None for the petitioner.
Sh. B.S. Barwal, Executive Engineer, B&R Division HPPWD,
Joginder Nagar (respondent) with Sh. Sanjeev Singh Rana, A.D.A.

The respondent/Executive Engineer has made the below given statement in the Court today on oath:-

“ The claimant/petitioner has not turned up despite intimation. As per the information received by me from the field staff, the petitioner is not interested to come to the Court and pursue the case since he/she is still working and the muster rolls are being issued in his/her favour regularly.

RO & AC

P.J.”

Sd/-

02-04-2014

2. In view of the above noted statement, I have no hesitation to conclude that no artificial breaks in service (as per the reference) were given to the petitioner by the respondent. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 30/2014

Smt. Bidya Devi w/o Shri Kalu Ram, r/o V.P.O. Makaridi, Tehsil Joginder Nagar, Distt.
Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, Distt. Mandi, H.P.
..Respondent.

02-04-2014 Present : None for the petitioner.
Sh. B.S. Barwal, Executive Engineer, B&R Division HPPWD,
Joginder Nagar (respondent) with Sh. Sanjeev Singh Rana, A.D.A.

The respondent/Executive Engineer has made the below given statement in the Court today
on oath:-

“ The claimant / petitioner has not turned up despite intimation. As per the information
received by me from the field staff, the petitioner is not interested to come to the Court and
pursue the case since he/she is still working and the muster rolls are being issued in his/her
favour regularly.

RO & AC

P.J.”

Sd/-

02-04-2014

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breaks in service (as per the reference) were given to the petitioner by the respondent. Parties to
bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary
action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.(Camp at Mandi).

Ref: No. : 84/2012

Van Mazdoor Sanghathan, Reg. No. VI-9517, Mohal, District Kullu, H.P. through its President Rajender Singh s/o Shri Tej Ram, r/o Village Kartah, P.O. Ropa, Sub Tehsil Sainj, Distt. Kullu, H.P. ..Petitioner.

Versus

1. The Principal Chief Conservator of Forests, Talland, Shimla-171001.

2. The Chief Conservator of Forests, National Park Shamshi, Tehsil & Distt. Kullu, H.P. ..Respondents.

03-04-2014 Present : Sh. Rajinder Singh, President of the Mazdoor Sangathan with Sh. Sanjay Mandyal, Adv.
Sh. Sanjeev Singh Rana, A.D.A. for the respondents.

Reply to the amendment application not filed. Previous costs of Rs. 2,000/- not paid. Sh. Rajinder Singh, President has made the below given statement in the Court today:-

“ मैं जिला बन मजदूर संगठन मोहल जिला कुल्लू का प्रधान हूं। हम यह केस न चलाना चाहते हैं क्योंकि मैं आजकल किसी ओर जगह कार्यरत हूं। तकनीकी कारणों से मैं मजदूर संगठन का प्रधान भविष्य में न रह सकता हूं। यह reference/claim petition दाखिल दफ्तर की जावे। हम अपने हितों की रक्षा के लिए जरूरत पड़ने पर नया demand notice प्रतिवादीगण को जारी करेंगे।

RO & AC

P.J.”

Sd/-

03-04-2014

2. Ordered accordingly. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.(Camp at Mandi).

Ref: No. : 243/2012

Sh. Baldev Chand s/o Sh. Hirda Ram, Village-Banerdi, P.O. Pehar, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Petitioner.

Versus

The General Manager, Bharti Telenet (Airtel), Airtel Towers, Mehli Mount, NH 22, Mehli, Shimla-171009.

..Respondent.

03-04-2014 Present : Petitioner with Sh. Lokesh Kapoor, Adv.
Sh. Shyam Kumar, Adv. csl. for the respondent.

The case is listed for arguments today, but the claimant/petitioner has made the below given statement in the Court :-

“ मैं यह reference/claim petition न चलाना चाहता हूं। दाखिल दफ्तर की जावे। मैं पैसों की वसूली के लिए दिवानी अदालत में मुकदमा करूंगा।

RO & AC

P.J.”

Sd/-

03-04-2014

2. Ordered accordingly. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.(Camp at Mandi)

Ref: No. : 34/2014

Sh. Sanjay Kumar s/o Shri Mehar Chand Thakur, r/o Village Shilla Halan-II, P.O. Patlikuhall, District Kullu, H.P. ..Petitioner.

Versus

The Employer/Executive Director, K.K.K. Hydro Power Ltd. Baragran, Tehsil & District Kullu, H.P. ..Respondent.

04-04-2014 Present : None for the petitioner.

Sh. Varun Kant Sharma, Adv. csl. for the respondent.

The petitioner has not turned up despite service / knowledge. Ld. csl. for the respondent has made the below given statement in the Court today :-

“ वादी के साथ समझौता हो चुका है। Full and final payment की receipt की कापी Mark-A है। वादी को पैसे banker Cheque द्वारा दिए गए थे। जिसकी कापी Mark-B है। समझौता होने के कारण ही वादी आज अदालत में न आया है। वह यह केस न चलाना चाहता है। मैंने वादी संजय कुमार से खुद फोन पर बात की थी। उसने मुझे बताया कि वह समझौता होने के कारण अदालत में न जाएगा और यह केस चलाने में वह interested है।

RO & AC

P.J.”

Sd/-

04-04-2014

2. Ordered accordingly. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 91/2014

Sh. Rishi Kant s/o Shri Chiranjil Lal, r/o VPO Dhandhari/Churadu, Tehsil Amb, District Una, H.P. *..Petitioner.*

Versus

1. Shri Vijay Kumar, c/o M/S Tigaksha Metallics Pvt. Ltd., Plot No. 16, Ram Nagar, Industrial Area Gagret, Tehsil Amb, District Una, H.P. (Contractor).

2. The Managing Director/Employer, M/S Tigaksha Metallics Pvt. Ltd., Plot No. 16, Ram Nagar, Industrial Area Gagret, Tehsil Amb, District Una, H.P. (Principal employer) *..Respondents.*

10-04-2014 Present : None for the petitioner.

None for the respondent No.1.

Sh. Anil Patial, Sr. Executive for the respondent No.2.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the claimant/petitioner. He is absent despite knowledge. It is already 2.30 p.m. Even statement of claim/demand has not been filed by the petitioner till date.

2. In view of the aforesaid facts, I have no hesitation to conclude that the petitioner is not interested to pursue the matter. For want of statement of claim/demand, it cannot be said that termination of the services of the petitioner by the respondents is illegal and unjustified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 92/2014

Sh. Ramti Raman s/o Shri Prithi Chand, r/o V.P.O. Heera Nagar/Kalaruhi, Tehsil Amb, District Una, H.P. *..Petitioner.*

Versus

The Managing Director/Employer, M/S Tigaksha Metalics Pvt. Ltd., Plot No. 16, Ram Nagar, Industrial Area Gagret, Tehsil Amb, District Una, H.P. *..Respondent.*

10-04-2014 Present : None for the petitioner.

Sh. Anil Patial, Sr. Executive for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the claimant/petitioner. He is absent despite knowledge. It is already 2.30 p.m. Even statement of claim/demand has not been filed by the petitioner till date.

2. In view of the aforesaid facts, I have no hesitation to conclude that the petitioner is not interested to pursue the matter. For want of statement of claim/demand, it cannot be said that termination of the services of the petitioner by the respondent is illegal and unjustified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE MEGA LOK ADALAT, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
DHARAMSHALA**

Reference No. 210/2013

Shri Partap Singh s/o Shri Mahajan Ram, R/o Village & P.O. Sari, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Petitioner.

vs.

The Executive Engineer, HPPWD Division Dharampur, Distt. Mandi, H.P. ..Respondent.

12.4.2014 Present: Shri Vijay Kaundal, Adv. for the petitioner
Shri Naresh Kumar Gupta, Executive Engineer, HPPWD Division,
Dharampur (respondent) with Shri Sanjeev Singh Rana, ADA

Award

With the intervention of the Lok Adalat, the parties have compromised. Statements of the respondent/Executive Engineer and the ld. counsel for the petitioner have been recorded separately. The same are reproduced below for ready reference:-

St. of Respd.

“In view of the similar matters already decided by this Court and the Hon’ble High Court of Himachal Pradesh, I have no objection if the instant reference/claim petition is allowed. The termination of the services of the petitioner w.e.f. 08.07.2005 may be set aside. The petitioner shall be entitled to the seniority and continuity in service from the date of the termination i.e. 08.07.2005. He (petitioner) will also be entitled to Rs.35,000/- (thirty five thousand only) to be paid by the department in lieu of the back wages and compensation etc. The services of the petitioner will be re-engaged after obtaining/receiving the sanction from the competent authority.

Sd/-

Sd/-

Sd/-

RO&AC

Member
Mega Lok Adalat

Judge
Mega Lok Adalat

Statement of Shri Vijay Kuandal, adv. counsel for the claimant/petitioner

Date
12.04.2014

I have heard the above statement made by the respondent and am satisfied with it. The reference/claim petition may be decided accordingly. As per the compromise, my client has agreed to receive the compensation of Rs.35,000/- (instead of Rs.50,000/-).

Sd/-

Sd/-

Sd/-

RO&AC

Member
Mega Lok Adalat

Judge
Mega Lok Adalat"

2. Ordered accordingly. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Award be sent to the appropriate Government for further necessary action at its end.

5. File after due completion be consigned to the Record Room.

Announced:

Bobby Maratha
(Member)
Mega Lok Adalat

Rajan Gupta
(Judge)
Mega Lok Adalat

**IN THE MEGA LOK ADALAT, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
DHARAMSHALA**

Reference No.211/2013

Shri Omkar Chand s/o Shri Harphool Singh, r/o Village Badher, P.O. Kujabalth, Tehsil
Sarkaghat, Distt. Mandi, H.P. *..Petitioner.*

vs.

The Executive Engineer, HPPWD Division Dharampur, Distt. Mandi, H.P. *..Respondent.*

12.4.2014 Present : Shri Vijay Kaundal, Adv. for the petitioner

Shri Naresh Kumar Gupta, Executive Engineer, HPPWD Division,
Dharampur (respondent) with Shri Sanjeev Singh Rana, ADA

AWARD

With the intervention of the Lok Adalat, the parties have compromised. Statements of the respondent/Executive Engineer and the ld. counsel for the petitioner have been recorded separately. The same are reproduced below for ready reference:-

St. of the respondent

"In view of the similar matters already decided by this Court and the Hon'ble High Court of Himachal Pradesh, I have no objection if the instant reference/claim petition is allowed. The termination of the services of the petitioner w.e.f. 08.07.2005 may be set aside. The petitioner shall be entitled to the seniority and continuity in service from the date of the termination i.e. 08.07.2005. He (petitioner) will also be entitled to Rs.35,000/- (thirty five thousand only) to be paid

by the department in lieu of the back wages and compensation etc. The services of the petitioner will be re-engaged after obtaining/receiving the sanction from the competent authority.

Sd/-

Sd/-

Sd/-

RO&AC

Member
Mega Lok Adalat

Judge
Mega Lok Adalat

Statement of Shri Vijay Kuandal, adv. counsel for the claimant/petitioner

Date

12.04.2014

I have heard the above statement made by the respondent and am satisfied with it. The reference/claim petition may be decided accordingly. As per the compromise, my client has agreed to receive the compensation of Rs.35,000/- (instead of Rs.50,000/-).

Sd/-

Sd/-

Sd/-

RO&AC

Member
Mega Lok Adalat

Judge
Mega Lok Adalat"

2. Ordered accordingly. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Award be sent to the appropriate Government for further necessary action at its end.

5. File after due completion be consigned to the Record Room.

Announced:

Bobby Maratha
(Member)
Mega Lok Adalat

Rajan Gupta
(Judge)
Mega Lok Adalat

**IN THE MEGA LOK ADALAT, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
DHARAMSHALA**

Reference No.209/2013

Shri Raj Kumar s/o Shri Surat Singh, r/o Village Katheli, P.O. Longni, Tehsil Sarkaghat,
Distt. Mandi, H.P. ..Petitioner.

vs.

The Executive Engineer, HPPWD Division Dharampur, Distt. Mandi, H.P. ..Respondent.

12.4.2014 Present : Shri Vijay Kaundal, Adv. for the petitioner

Shri Naresh Kumar Gupta, Executive Engineer, HPPWD Division,
Dharampur (respondent) with Shri Sanjeev Singh Rana, ADA

AWARD

With the intervention of the Lok Adalat, the parties have compromised. Statements of the respondent/Executive Engineer and the ld. counsel for the petitioner have been recorded separately. The same are reproduced below for ready reference:-

St. of Respd.

“In view of the similar matters already decided by this Court and the Hon’ble High Court of Himachal Pradesh, I have no objection if the instant reference/claim petition is allowed. The termination of the services of the petitioner w.e.f. 08.07.2005 may be set aside. The petitioner shall be entitled to the seniority and continuity in service from the date of the termination i.e. 08.07.2005. He (petitioner) will also be entitled to Rs.35,000/- (thirty five thousand only) to be paid by the department in lieu of the back wages and compensation etc. The services of the petitioner will be re-engaged after obtaining/receiving the sanction from the competent authority.

Sd/-
RO&AC

Sd/-
Member
Mega Lok Adalat

Sd/-
Judge
Mega Lok Adalat

Statement of Shri Vijay Kuandal, adv. counsel for the claimant/petitioner

Date
12.04.2014

I have heard the above statement made by the respondent and am satisfied with it. The reference/claim petition may be decided accordingly. As per the compromise, my client has agreed to receive the compensation of Rs.35,000/- (instead of Rs.50,000/-).

Sd/-
RO&AC

Sd/-
Member
Mega Lok Adalat

Sd/-
Judge
Mega Lok Adalat”

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced: Bobby Maratha
(Member)
Mega Lok Adalat

Rajan Gupta
(Judge)
Mega Lok Adalat

**IN THE MEGA LOK ADALAT, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
DHARAMSHALA**

Reference No.212/2013

Smt. Sheela Devi w/o Shri Hem Raj, r/o Village Labanpur, P.O. Baroti, Tehsil Sarkaghat,
Distt. Mandi, H.P. ..Petitioner.

Vs.

The Executive Engineer, HPPWD Division Dharampur, Distt. Mandi, H.P. ..Respondent.

12.4.2014 Present : Shri Vijay Kaundal, Adv. for the petitioner

Shri Naresh Kumar Gupta, Executive Engineer, HPPWD Division,
Dharampur (respondent) with Shri Sanjeev Singh Rana, ADA

AWARD

With the intervention of the Lok Adalat, the parties have compromised. Statements of the respondent/Executive Engineer and the ld. counsel for the petitioner have been recorded separately. The same are reproduced below for ready reference:-

St. of Respd.

“In view of the similar matters already decided by this Court and the Hon’ble High Court of Himachal Pradesh, I have no objection if the instant reference/claim petition is allowed. The termination of the services of the petitioner w.e.f. 08.07.2005 may be set aside. The petitioner shall be entitled to the seniority and continuity in service from the date of the termination i.e. 08.07.2005. She (petitioner) will also be entitled to Rs.35,000/- (thirty five thousand only) to be paid by the department in lieu of the back wages and compensation etc. The services of the petitioner will be re-engaged after obtaining/receiving the sanction from the competent authority.

Sd/-
RO&ACSd/-
Member
Mega Lok AdalatSd/-
Judge
Mega Lok Adalat

Statement of Shri Vijay Kuandal, adv. counsel for the claimant/petitioner

Date
12.04.2014

I have heard the above statement made by the respondent and am satisfied with it. The reference/claim petition may be decided accordingly. As per the compromise, my client has agreed to receive the compensation of Rs.35,000/- (instead of Rs.50,000/-).

Sd/-
RO&ACSd/-
Member
Mega Lok AdalatSd/-
Judge
Mega Lok Adalat”

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

Bobby Maratha
(Member)
Mega Lok AdalatRajan Gupta
(Judge)
Mega Lok Adalat

**IN THE MEGA LOK ADALAT, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
DHARAMSHALA**

Reference No.33/2012

Shri Parveen Kumar s/o Shri Jagdish Chand, r/o Village Chapanu, P.O. Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent.

vs. The Executive Engineer, HPPWD Dharampur

12.4.2014 Present : Shri Vijay Kaundal, Adv. for the petitioner
Shri Naresh Kumar Gupta, Executive Engineer, HPPWD Division,
Dharampur (respondent) with Shri Sanjeev Singh Rana, ADA

AWARD

With the intervention of the Lok Adalat, the parties have compromised. Statements of the respondent/Executive Engineer and the ld. counsel for the petitioner have been recorded separately. The same are reproduced below for ready reference:-

St. of the Respd.

“The date of retrenchment of the petitioner is wrongly mentioned in the reference/notification issued by the appropriate Government (Labour Commissioner, H.P.). The actual date of termination of the services of the petitioner is 09-02-2004 as per the record. I have no objection, in case, this reference/claim petition is allowed since the similar matters have already been decided by this Court and the Hon’ble High Court of Himachal Pradesh. The retrenchment of the services of the petitioner may be set aside. He shall be entitled to the seniority and continuity in service from the date of the termination i.e. 09-02-2004. The petitioner shall also be entitled to lump-sum amount of Rs. 35,000/- (Thirty Five Thousand only) to be paid by the department in lieu of the back wages and compensation etc. The services of the petitioner will be re-engaged after obtaining /receiving the sanction from the competent authority.

Sd/-
RO & AC

Sd/-
Member
Mega Lok Adalat

Sd/-
Judge
Mega Lok Adalat

Statement of Shri Vijay Kaundal, adv. counsel for the claimant/petitioner.

Date
12-04-2014

I have heard the above statement made by the respondent and am satisfied with it. The reference/claim petition may be decided accordingly. As per the compromise, my client has agreed to receive the compensation of Rs. 35,000/- (instead of Rs. 50,000/-).

Sd/-
RO & AC

Sd/-
Member
Mega Lok Adalat

Sd/-
Judge
Mega Lok Adalat

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced: Bobby Maratha
(Member)
Mega Lok Adalat

Rajan Gupta
(Judge)
Mega Lok Adalat

**IN THE MEGA LOK ADALAT, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
DHARAMSHALA**

Reference No.08/2012

Shri Jagdish Chand s/o Shri Mani Ram, r/o Village and P.O. Pehad, Sub Tehsil Dharampur,
District Mandi, H.P. ..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt.
Mandi, H.P.

12.4.2014 Present : Shri Vijay Kaundal, Adv. for the petitioner
Shri Naresh Kumar Gupta, Executive Engineer, HPPWD Division,
Dharampur (respondent) with Shri Sanjeev Singh Rana, ADA

AWARD

With the intervention of the Lok Adalat, the parties have compromised. Statements of the respondent/Executive Engineer and the ld. counsel for the petitioner have been recorded separately. The same are reproduced below for ready reference:-

St. of the Respd.

“The date of retrenchment of the petitioner is wrongly mentioned in the reference/notification issued by the appropriate Government (Labour Commissioner, H.P.). The actual date of termination of the services of the petitioner is 09-02-2004 as per the record. I have no objection, in case, this reference/claim petition is allowed since the similar matters have already been decided by this Court and the Hon’ble High Court of Himachal Pradesh. The retrenchment of the services of the petitioner may be set aside. He shall be entitled to the seniority and continuity in service from the date of the termination i.e. 09-02-2004. The petitioner shall also be entitled to lump-sum amount of Rs. 35,000/-(Thirty Five Thousand only) to be paid by the department in lieu of the back wages and compensation etc. The services of the petitioner will be re-engaged after obtaining /receiving the sanction from the competent authority.

Sd/-
RO & AC

Sd/-
Member
Mega Lok Adalat

Sd/-
Judge
Mega Lok Adalat

Statement of Shri Vijay Kaundal, adv. counsel for the claimant/petitioner.

Date

12-04-2014

I have heard the above statement made by the respondent and am satisfied with it. The reference/claim petition may be decided accordingly. As per the compromise, my client has agreed to receive the compensation of Rs. 35,000/- (instead of Rs. 50,000/-).

Sd/-
RO & AC

Sd/-
Member
Mega Lok Adalat

Sd/-
Judge
Mega Lok Adalat

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

Bobby Maratha
(Member)
Mega Lok Adalat

Rajan Gupta
(Judge)
Mega Lok Adalat

**IN THE MEGA LOK ADALAT, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
DHARAMSHALA**

Reference No.50/2012

Shri Sanjay Kumar s/o Shri Sher Singh, r/o Village Haryanal, P.O. Tanehad, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Petitioner.

Vs.

The Executive Engineer, HPPWD (B&R) Division Dharampur, Distt. Mandi, H.P.

..Respondent.

12.4.2014 Present : Shri Vijay Kaundal, Adv. for the petitioner

Shri Naresh Kumar Gupta, Executive Engineer, HPPWD Division,
Dharampur (respondent) with Shri Sanjeev Singh Rana, ADA

AWARD

With the intervention of the Lok Adalat, the parties have compromised. Statements of the respondent/Executive Engineer and the ld. counsel for the petitioner have been recorded separately. The same are reproduced below for ready reference:-

St. of the Respd.

“The date of retrenchment of the petitioner is wrongly mentioned in the reference/notification issued by the appropriate Government (Labour Commissioner, H.P.). The actual date of termination of the services of the petitioner is 09-02-2004 as per the record. I have no objection, in case, this reference/claim petition is allowed since the similar matters have already been decided by this Court and the Hon’ble High Court of Himachal Pradesh. The retrenchment of the services of the petitioner may be set aside. He shall be entitled to the seniority and continuity in service from the date of the termination i.e. 09-02-2004. The petitioner shall also be entitled to lump-sum amount of Rs. 35,000/-(Thirty Five Thousand only) to be paid by the department in lieu of the back wages and compensation etc. The services of the petitioner will be re-engaged after obtaining /receiving the sanction from the competent authority.

Sd/-
RO & AC

Sd/-
Member
Mega Lok Adalat

Sd/-
Judge
Mega Lok Adalat

Statement of Shri Vijay Kaundal, adv. counsel for the claimant/petitioner.

Date
12-04-2014

I have heard the above statement made by the respondent and am satisfied with it. The reference/claim petition may be decided accordingly. As per the compromise, my client has agreed to receive the compensation of Rs. 35,000/- (instead of Rs. 50,000/-).

Sd/-
RO & AC

Sd/-
Member
Mega Lok Adalat

Sd/-
Judge
Mega Lok Adalat

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

Bobby Maratha
(Member)
Mega Lok Adalat

Rajan Gupta
(Judge)
Mega Lok Adalat

**IN THE MEGA LOK ADALAT, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
DHARAMSHALA**

Reference No.37/2012

Smt. Fulmu Devi w/o Shri Jai Singh, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. ..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

..Respondent.

12.4.2014 Present : Shri Vijay Kaundal, Adv. for the petitioner
Shri Naresh Kumar Gupta, Executive Engineer, HPPWD Division,
Dharampur (respondent) with Shri Sanjeev Singh Rana, ADA

AWARD

With the intervention of the Lok Adalat, the parties have compromised. Statements of the respondent/Executive Engineer and the ld. counsel for the petitioner have been recorded separately. The same are reproduced below for ready reference:-

St. of the Respd.

“The date of retrenchment of the petitioner is wrongly mentioned in the reference/notification issued by the appropriate Government (Labour Commissioner, H.P.). The actual date of termination of the services of the petitioner is 09-02-2004 as per the record. I have no objection, in case, this reference/claim petition is allowed since the similar matters have already been decided by this Court and the Hon’ble High Court of Himachal Pradesh. The retrenchment of the services of the petitioner may be set aside. She shall be entitled to the seniority and continuity in service from the date of the termination i.e. 09-02-2004. The petitioner shall also be entitled to lump-sum amount of Rs. 35,000/- (Thirty Five Thousand only) to be paid by the department in lieu of the back wages and compensation etc. The services of the petitioner will be re-engaged after obtaining /receiving the sanction from the competent authority.

Sd/-
RO & AC

Sd/-
Member
Mega Lok Adalat

Sd/-
Judge
Mega Lok Adalat

Statement of Shri Vijay Kaundal, adv. counsel for the claimant/petitioner.

Date
12-04-2014

I have heard the above statement made by the respondent and am satisfied with it. The reference/claim petition may be decided accordingly. As per the compromise, my client has agreed to receive the compensation of Rs. 35,000/- (instead of Rs. 50,000/-).

Sd/-
RO & AC

Sd/-
Member
Mega Lok Adalat

Sd/-
Judge
Mega Lok Adalat

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Award be sent to the appropriate Government for further necessary action at its end.

5. File after due completion be consigned to the Record Room.

Announced:	Bobby Maratha (Member) Mega Lok Adalat	Rajan Gupta (Judge) Mega Lok Adalat
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**IN THE MEGA LOK ADALAT, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
DHARAMSHALA**

Reference No.358/2012

Shri Dila Ram s/o Shri Kahan Singh, r/o Village Bhatour, P.O. Pehad, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Petitioner.

Vs.

The Executive Engineer, HPPWD Division Dharampur, Distt. Mandi, H.P. ..Respondent.

12.4.2014 Present : Shri Vijay Kaundal, Adv. for the petitioner
Shri Naresh Kumar Gupta, Executive Engineer, HPPWD Division,
Dharampur (respondent) with Shri Sanjeev Singh Rana, ADA

AWARD

With the intervention of the Lok Adalat, the parties have compromised. Statements of the respondent/Executive Engineer and the ld. counsel for the petitioner have been recorded separately. The same are reproduced below for ready reference:-

St. of the Respd.

“The date of retrenchment of the petitioner is wrongly mentioned in the reference/notification issued by the appropriate Government (Labour Commissioner, H.P.). The actual date of termination of the services of the petitioner is 09-02-2004 as per the record. I have no objection, in case, this reference/claim petition is allowed since the similar matters have already been decided by this Court and the Hon’ble High Court of Himachal Pradesh. The retrenchment of the services of the petitioner may be set aside. He shall be entitled to the seniority and continuity in service from the date of the termination i.e. 09-02-2004. The petitioner shall also be entitled to lump-sum amount of Rs. 35,000/-(Thirty Five Thousand only) to be paid by the department in lieu of the back wages and compensation etc. The services of the petitioner will be re-engaged after obtaining /receiving the sanction from the competent authority.

Sd/- RO & AC	Sd/- Member Mega Lok Adalat	Sd/- Judge Mega Lok Adalat
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Statement of Shri Vijay Kaundal, adv. counsel for the claimant/petitioner.

Date
12-04-2014

I have heard the above statement made by the respondent and am satisfied with it. The reference/claim petition may be decided accordingly. As per the compromise, my client has agreed to receive the compensation of Rs. 35,000/- (instead of Rs. 50,000/-).

Sd/-
RO & AC

Sd/-
Member
Mega Lok Adalat

Sd/-
Judge
Mega Lok Adalat

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

Bobby Maratha
(Member)
Mega Lok Adalat

Rajan Gupta
(Judge)
Mega Lok Adalat

**IN THE MEGA LOK ADALAT, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
DHARAMSHALA**

Reference No. 21/2012

Shri Alankrit s/o Shri Jindu Ram, r/o Village Ludhiyana, P.O. Pehad, Sub Tehsil Dharampur,
District Mandi, H.P. *..Petitioner.*

Vs.

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat,
District Mandi, H.P. *..Respondent.*

12.4.2014 Present : Shri Vijay Kaundal, adv. for the petitioner
Shri Naresh Kumar Gupta, Executive Engineer, HPPWD (B&R) Division,
Dharampur (respondent) with Shri Sanjeev Singh Rana, ADA

AWARD

With the intervention of the Lok Adalat, the parties have compromised. Statements of the respondent/Executive Engineer and the ld. counsel for the petitioner have been recorded separately. The same are reproduced below for ready reference:-

St. of Sh. Naresh Gupta (Resp.)

“The petitioner/workman Sh. Alankrit died on 21.5.2013. I produce the photo stat copy of his death certificate. The date of termination of the services of the petitioner is wrongly mentioned in the reference/notification issued by the appropriate Government. As per the record, the services of the deceased petitioner were terminated on 09.2.2004. In view of the similar matters already decided by this Court and the Hon’ble High Court of Himachal

Pradesh, I have no objection in case the termination of the services of the workman ordered on 09.2.2004 is set aside. The department will pay Rs.50,000/- (fifty thousand) as compensation to the legal heirs of the deceased workman. Such amount will be paid in equal shares to all the legal heirs of the deceased. The petitioner will also be entitled to the seniority and continuity in service from the date of the termination i.e. 09.2.2004 till his death.

Sd/-
RO&AC

Sd/-
Member

Sd/-
Judge

Statement of Shri Vijay Kaundal, adv. for the petitioner

Date
12.4.2014

I have heard the above statement made by the respondent and am satisfied with it. The reference/claim petition may be decided accordingly.

Sd/-
RO&AC

Sd/-
Member

Sd/-
Judge"

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

Bobby Maratha
(Member)
Mega Lok Adalat

Rajan Gupta
(Judge)
Mega Lok Adalat

**IN THE MEGA LOK ADALAT, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
DHARAMSHALA**

Reference No.25/2012

Shri Gian Chand s/o Shri Guju Ram, r/o Village Kherhar, P.O. Hyun Pehad, Tehsil Sarkaghat,
Distt. Mandi, H.P. ..Petitioner.

Vs.

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District
Mandi, H.P. ..Respondent.

12.4.2014 Present : Shri Vijay Kaundal, Adv. for the petitioner
Shri Naresh Kumar Gupta, Executive Engineer, HPPWD Division,
Dharampur (respondent) with Shri Sanjeev Singh Rana, ADA

AWARD

With the intervention of the Lok Adalat, the parties have compromised. Statements of the respondent/Executive Engineer and the ld. counsel for the petitioner have been recorded separately. The same are reproduced below for ready reference:-

St. of the Respd.

“The date of retrenchment of the petitioner is wrongly mentioned in the reference/notification issued by the appropriate Government (Labour Commissioner, H.P.). The actual date of termination of the services of the petitioner is 09-02-2004 as per the record. I have no objection, in case, this reference/claim petition is allowed since the similar matters have already been decided by this Court and the Hon’ble High Court of Himachal Pradesh. The retrenchment of the services of the petitioner may be set aside. He shall be entitled to the seniority and continuity in service from the date of the termination i.e. 09-02-2004. The petitioner shall also be entitled to lump-sum amount of Rs. 35,000/-(Thirty Five Thousand only) to be paid by the department in lieu of the back wages and compensation etc. The services of the petitioner will be re-engaged after obtaining /receiving the sanction from the competent authority.

Sd/-
RO & AC

Sd/-
Member
Mega Lok Adalat

Sd/-
Judge
Mega Lok Adalat

Statement of Shri Vijay Kaundal, adv. counsel for the claimant/petitioner.

Date
12-04-2014

I have heard the above statement made by the respondent and am satisfied with it. The reference/claim petition may be decided accordingly. As per the compromise, my client has agreed to receive the compensation of Rs. 35,000/- (instead of Rs. 50,000/-).

Sd/-
RO & AC

Sd/-
Member
Mega Lok Adalat

Sd/-
Judge
Mega Lok Adalat

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

Bobby Maratha
(Member)
Mega Lok Adalat

Rajan Gupta
(Judge)
Mega Lok Adalat

**IN THE MEGA LOK ADALAT, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
DHARAMSHALA**

Reference No.15/2014

Shri Surat Singh s/o late Sh. Mahant Ram, r/o VPO Sari, Tehsil Sarkaghat, Distt. Mandi, H.P.
..Petitioner.

vs.

The Executive Engineer, HPPWD Division Dharampur, Distt. Mandi, H.P. ..Respondent.

12.4.2014 Present : Shri Vijay Kaundal, Adv. for the petitioner
Shri Naresh Kumar Gupta, Executive Engineer, HPPWD Division,
Dharampur (respondent) with Shri Sanjeev Singh Rana, ADA

AWARD

With the intervention of the Lok Adalat, the parties have compromised. Statements of the respondent/Executive Engineer and the ld. counsel for the petitioner have been recorded separately. The same are reproduced below for ready reference:-

St. of Respd.

“In view of the similar matters already decided by this Court and the Hon’ble High Court of Himachal Pradesh, I have no objection if the instant reference/claim petition is allowed. The termination of the services of the petitioner w.e.f. 08.07.2005 may be set aside. The petitioner shall be entitled to the seniority and continuity in service from the date of the termination i.e. 08.07.2005. He (petitioner) will also be entitled to Rs.35,000/- (thirty five thousand only) to be paid by the department in lieu of the back wages and compensation etc. The services of the petitioner will be re-engaged after obtaining/receiving the sanction from the competent authority.

Sd/-
RO&AC

Sd/-
Member
Mega Lok Adalat

Sd/-
Judge
Mega Lok Adalat

Statement of Shri Vijay Kuandal, adv. counsel for the claimant/petitioner

Date
12.04.2014

I have heard the above statement made by the respondent and am satisfied with it. The reference/claim petition may be decided accordingly. As per the compromise, my client has agreed to receive the compensation of Rs.35,000/- (instead of Rs.50,000/-).

Sd/-
RO&AC

Sd/-
Member
Mega Lok Adalat

Sd/-
udge
Mega Lok Adalat”

2. Ordered accordingly. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Award be sent to the appropriate Government for further necessary action at its end.

5. File after due completion be consigned to the Record Room.

Announced:

Bobby Maratha
(Member)
Mega Lok Adalat

Rajan Gupta
(Judge)
Mega Lok Adalat

**IN THE MEGA LOK ADALAT, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
DHARAMSHALA**

Reference No.24/2014

Shri Purvia Ram s/o Shri Ram Sai, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, Distt. Mandi, H.P. *..Petitioner.*

vs.

The Executive Engineer, HPPWD Division Dharampur, Distt. Mandi, H.P. *..Respondent.*

12.4.2014 Present : Shri Vijay Kaundal, Adv. for the petitioner
Shri Naresh Kumar Gupta, Executive Engineer, HPPWD Division,
Dharampur (respondent) with Shri Sanjeev Singh Rana, ADA

AWARD

With the intervention of the Lok Adalat, the parties have compromised. Statements of the respondent/Executive Engineer and the ld. counsel for the petitioner have been recorded separately. The same are reproduced below for ready reference:-

St. of Respd.

“In view of the similar matters already decided by this Court and the Hon’ble High Court of Himachal Pradesh, I have no objection if the instant reference/claim petition is allowed. The termination of the services of the petitioner w.e.f. 08.07.2005 may be set aside. The petitioner shall be entitled to the seniority and continuity in service from the date of the termination i.e. 08.07.2005. He (petitioner) will also be entitled to Rs.35,000/- (thirty five thousand only) to be paid by the department in lieu of the back wages and compensation etc. The services of the petitioner will be re-engaged after obtaining/receiving the sanction from the competent authority.

Sd/-
RO&AC

Sd/-
Member
Mega Lok Adalat

Sd/-
Judge
Mega Lok Adalat

Statement of Shri Vijay Kuandal, adv. counsel for the claimant/petitioner

Date
12.04.2014

I have heard the above statement made by the respondent and am satisfied with it. The reference/claim petition may be decided accordingly. As per the compromise, my client has agreed to receive the compensation of Rs.35,000/- (instead of Rs.50,000/-).

Sd/-
RO&AC

Sd/-
Member
Mega Lok Adalat

Sd/-
Judge
Mega Lok Adalat”

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

Bobby Maratha
(Member)
Mega Lok Adalat

Rajan Gupta
(Judge)
Mega Lok Adalat

**IN THE MEGA LOK ADALAT, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
DHARAMSHALA**

Reference No.215/2013

Shri Beli Ram s/o Shri Nathu Ram, r/o Village Panyala, P.O. Daloh, Tehsil Ghumarwin,
Distt. Bilaspur, H.P. ..Petitioner.

Vs.

The Executive Engineer, HPPWD Division Ghumarwin, Distt. Bilaspur, H.P. ..Respondent.

12.4.2014 Present : Sh. S.S. Sippy, AR for the petitioner
Sh. R.C. Verma, Assistant Engineer, HPPWD Sub Division Bharari for the
respondent with Shri Sanjeev Singh Rana, ADA

AWARD

With the intervention of the Lok Adalat, the parties have compromised. Statements of the respondent/Assistant Engineer and the ld. AR for the petitioner have been recorded separately. The same are reproduced below for ready reference:-

St. of the Respd.

“In view of the similar matters already decided by this Court and the Hon’ble High Court of Himachal Pradesh, I have no objection if this reference/claim petition is allowed. The termination of the services of the petitioner by the department may be set aside. The petitioner shall be reinstated in service after obtaining/receiving the sanction from the competent

authority. He shall be entitled to the seniority and continuity in service from the date/month of his termination i.e. Sept. 1999 except back wages.

Sd/-
RO & AC

Sd/-
Member

Sd/-
Judge

Statement of Sh. S.S. Sippy, A. R. for the petitioner.

Date
12-04-2014

उपरोक्त ब्यान प्रतिवादी सुन लिया है । इससे सहमत हूं। ब्यानों अनुसार मुकदमें का फैसला कर दिया जाए ।

Sd/-
RO & AC

Sd/-
Member

Sd/-
Judge

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

Bobby Maratha
(Member)
Mega Lok Adalat

Rajan Gupta
(Judge)
Mega Lok Adalat

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 227/2012
Date of Institution : 01.5.2012
Date of Decision : 16.04.2014

Smt. Bhichhi Devi w/o Shri Jai Singh, r/o Village Bhagehar, P.O. Chauntra, Tehsil Joginder Nagar, Distt. Mandi, H.P. ..Petitioner.

Versus

1. The Executive Officer, Municipal Council, Mandi.
2. Secretary, Nagar Panchayat, Joginder Nagar, District Mandi, H.P.

..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent No.2 : Sh. Abhishek Lakhanpal, Adv.
 For the Respondent No.1 : Sh. S.C. Diwedi, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Bhichhi Devi W/O Sh. Jai Singh, R/O Village-Bhagehar, P.O. Chauntra, Tehsil Joginder Nagar, Distt. Mandi, H.P. by the i) The Executive Officer, Municipal Council, Mandi & ii) Secretary, Nagar Panchayat Joginder Nagar, Distt. Mandi, H.P. from time to time w.e.f. 2001 to 2004 and finally during June, 2004 as alleged by the workman, is legal and justified? If not, to what amount of back wages, seniority, past service benefits & compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily waged beldar on muster roll basis by the respondents in the year 2001. No appointment letter was issued in her name. She worked as such up-to the month of June, 2004. During the period of her employment, the respondents gave her the fictional breaks time and again so that she does not complete 240 days of continuous service as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). Instead of issuing the muster rolls for the entire month, the respondents provided her the muster rolls for 15 or 16 days every month. This practice was continued by the respondents up-to the month of June, 2004. Her service conditions were changed by the respondents without any notice in contravention of the provisions of Section 9-A of the Act. In the month of June, 2004, her services were finally terminated by the respondents. Before the disengagement of her services, neither any show cause notice was issued to her nor an inquiry was conducted for the misconduct, if any. Wages in lieu of the notice period and the retrenchment compensation were also not paid to her by the respondents. She had completed more than 240 days of work in the year 2003. At the time of the termination of her services, the seniority list of daily waged workers was not made available to her by the respondents. The persons junior to her namely S/Shri Ravi Kant, Rajesh Kumar and Suresh Kumar were retained in service by the respondents. The latter failed to abide by the principle of ‘last come first go’. Not only this, after the termination of her services new/fresh hands were engaged by the respondents. She was not given an opportunity of re-employment. The act and conduct of the respondents is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Act. The break period is required to be counted for the purpose of continuous service. From the date/month of her final termination i.e. June, 2004, she is unemployed.

As such, she (petitioner) prays that the artificial breaks in service given to her by the respondents as well as the final termination of her services ordered by the respondents in the month of June, 2004 be upset. The respondents be directed to reinstate her in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondents appeared. They filed separate replies controverting the averments made in the petition/statement of claim. The respondent No.1 in his reply has taken the preliminary objections to the effect that the petition is bad for mis-joinder of the parties and non joinder of the necessary parties. The petition is also bad for want of better particulars. The petitioner be directed to disclose as to on which date, month and year, her services were engaged by him (respondent No.1).

On merits, it has been denied that the services of the petitioner were engaged by him (replying respondent). As per the record of Municipal Council, Mandi, the services of the petitioner were never engaged as a beldar. Therefore, the question of giving artificial breaks in service to her or the retrenchment of her services does not arise. The petitioner never served the Municipal Council, Mandi. There is no question of the change of her service conditions. S/Shri Ravi Kant, Rajesh Kumar and Suresh Kumar are not working as daily waged workers under him (respondent No.1). The petition is meritless.

In these circumstances, the respondent No.1 prays that the instant petition be dismissed with costs.

4. The respondent No.2 in his reply has raised the preliminary objections to the effect that the reference/claim petition is misconceived. The petitioner has no locus standi to sue. She did not complete 240 days of work in any calendar year of her engagement. The petitioner has no cause of action. The claim petition is not maintainable. The petitioner has not come to the Court with clean hands. She abandoned the job of her own. The petition is time barred. The petitioner is trying to rake up the issue which has lapsed with the passage of time.

On merits, it has not been specifically denied that the services of the petitioner were engaged as a daily waged beldar on muster roll basis in the year 2001 and she served as such up-to the month of June, 2004. The services of the petitioner were engaged for a specific work. Before the work could be finished, she left the job. The petitioner was habitual absentee. She did not attend her duties regularly. The petitioner is estopped from filing the claim petition by her act and conduct. She cannot be permitted to take the inconsistent pleas contrary to the factual position. Neither any fictional break in service was provided to the petitioner nor her services were finally terminated as alleged. No person junior to the petitioner has been retained in service. Even no new /fresh hands have been employed. No provision of the Act has been flouted. Since the petitioner willingly left the service, she is not entitled to any protection under the Act.

As such, the respondent No.2 too prays that the petition in hand be dismissed.

5. Rejoinder to the reply of the respondent No.2 has been filed by the petitioner. In it, the averments made in the claim petition have been reiterated and the objections put forth by the respondents have been denied. It has been disputed that she left/abandoned the job.

6. Per order dated 09.01.2013, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondents from time to time w.e.f. the year 2001 to 2004 is illegal and unjustified as alleged? OPP
2. Whether the final termination of the services of the petitioner by the respondents in the month of June, 2004 is illegal and unjustified as alleged? OPP
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? OPR
4. Whether the petitioner has the locus standi to sue? OPP
5. Whether the petitioner has a cause of action? OPP
6. Whether the claim petition is not maintainable in present form? OPR

7. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR

8. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? OPR

9. Relief.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Yes. However, the services of the petitioner were finally terminated by the respondent No.2 only.

Issue No.3 : Not pressed

Issue No.4 : Yes

Issue No.5 : Yes

Issue No.6 : Not pressed

Issue No.7 : Not pressed

Issue No.8 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 AND 2

9. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

10. Smt. Bhichhi Devi (petitioner) stepped into the witness box as PW1.y In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that she never served under the respondent No.1. She denied that she left the job voluntarily and no person junior to her is serving the respondent No.2. She also denied that to gain the employment and derive other undue benefits, she has instituted a phoney petition.

11. Ex. PW1/B is Proforma-I, whereas, Ex. PW1/C is Proforma-III. Both these documents have been issued by the respondent No.2. They unfold the names of the daily wagers employed by the respondent No.2.

12. No evidence oral or documentary has been adduced by the respondents.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager by the respondent No.2. The mandays chart of the petitioner is not there on the record. Even her name does not figure in the details of the workmen given in proforma-I (Ex. PW1/B). The respondent No.2 has not placed/exhibited on the file any document evidencing that the petitioner was employed for undertaking the specific works only and that too for a particular/limited period.

14. In paras 1 and 2 of the claim petition, it has been pleaded that artificial breaks in service were provided to the petitioner from the year of her initial engagement i.e. the year 2001 up-to the month of June, 2004, so that she does not complete 240 days of continuous service. In subsequent para No.4 of the claim petition, it has been contended that the petitioner had worked for more than 240 days in the year 2003. The contradictory stand taken by the petitioner is nocuous to her cause. For the said reason, it cannot be said that intentional breaks in service were provided to the petitioner by the respondent No.2/employer as alleged.

15. The version of the petitioner is that in the month of June, 2004, her services were finally terminated by the respondent No.2 by a verbal order. While denying the said fact, the respondent No.2 has pleaded that the petitioner was an intermittent worker. She left the job of her own accord and free volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent No.2 calling upon her to resume the duties after she allegedly left the same. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent No.2 for her alleged willful absence from duty. The plea of abandonment put forth by the respondent No.2/employer is not established.

16. As already mentioned, the mandays chart of the petitioner is not there on the file. Due to this reason, it cannot be said that the petitioner had completed 240 days of work in a block of 12 calendar months preceding the date/month of her termination i.e. June, 2004. The provisions of Section 25-F of the Act are thus not attracted in this case.

17. Ex. PW1/B (Proforma-I) depicts that S/Shri Surinder Kumar and Ramesh Kumar were employed by the respondent No.2 in the year 2003. They are junior to the petitioner whose services were engaged in the year 2001. Ex. PW1/B clarifies that S/Shri Surinder Kumar and Ramesh Kumar kept on serving the respondent No.2 even after the year 2004. This indicates that the respondent No.2 failed to abide by the principle of 'last come first go'. His action contravenes the provisions of Section 25-G of the Act.

18. Not only this, Ex. PW1/B reveals that after the final termination of the services of the petitioner in the month of June, 2004, new/fresh hands namely Shri Joni Pal and Shri Sohan Lal etc. were employed by the respondent No.2 in the years 2005 and 2006. There is nothing on the record to show that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner by the respondent No.2. This goes to show that the respondent No.2 also contravened the provisions of Section 25-H of the Act. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date/month of her termination as envisaged under Section 25-B of the Act.

19. Such being the situation, I have no hesitation to conclude that the final termination of the services of the petitioner by the respondent No.2 in the month of June, 2004 is illegal and unjustified. No artificial breaks in service were provided to the petitioner by the respondent No.2.
20. These issues are decided accordingly.

ISSUES NO. 3, 6 AND 7

21. Not pressed.

ISSUES NO. 4 AND 5

22. Taking into account my findings on the issues No.1 and 2 above, it is held that the petitioner has a cause of action against the respondent No.2. She also has the locus standi to sue.

23. These issues are decided in favour of the petitioner and against the respondent No.2

ISSUE NO. 8

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon’ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

“19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

26. In Mohan Lal’s case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination.

The Hon'ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.

27. Now comes the all important question as to what relief should be granted/awarded to the petitioner?

At the time of arguments, the Id. counsel for the respondent No.2/employer did not dispute the fact that the services of Smt. Mansa Devi and Shri Om Parkash (daily wagers) were also terminated by his client in the month of June, 2004. Both the workmen namely Smt. Mansa Devi and Shri Om Parkash have been re-engaged by the respondent No.2 in obedience to the Awards dated 19.9.2013 passed by this Court. To avoid discrimination amongst the workmen, the petitioner is also entitled to the reinstatement of her services.

28. While testifying in the Court as PW1, the petitioner has given her age as 51 years. It is common knowledge that a lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the back wages.

29. This issue is also decided in favour of the petitioner and against the respondent No.2.

RELIEF (ISSUE NO.9)

30. As a sequel to my findings on the various issues, the instant claim petition being meritless and not maintainable against the respondent No.1 fails. The same is dismissed against him. However, the claim petition succeeds in part and the same is partly allowed against the respondent No.2. The retrenchment of the petitioner is set aside and quashed. The respondent No.2 is directed to reengage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date/month of her illegal termination i.e. June, 2004 except back wages. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of April, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 93/2014

Smt. Jaswant Kaur w/o Shri Nathu Ram, r/o V.P.O. Saloi, Tehsil Amb, District Una, H.P.

..Petitioner.

Versus

1. Shri Suresh Kumar Kaushal, c/o M/S Tigaksha Metalics Pvt. Ltd., Plot No. 16, Ram Nagar, Industrial Area Gagret, Tehsil Amb, District Una, H.P. (Contractor).

2. The Managing Director/Employer, M/S Tigaksha Metalics Pvt. Ltd., Plot No. 16, Ram Nagar, Industrial Area Gagret, Tehsil Amb, District Una, H.P. (Principal employer)

..Respondents.

10-04-2014 Present: None for the petitioner.

Respondent No.1 in person.

Sh. Anil Patial, Sr. Executive for the respondent No.2.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the claimant/petitioner. She is absent despite knowledge. It is already 2.30 p.m. Even statement of claim/demand has not been filed by the petitioner till date.

2. In view of the aforesaid facts, I have no hesitation to conclude that the petitioner is not interested to pursue the matter. For want of statement of claim/demand, it cannot be said that termination of the services of the petitioner by the respondents is illegal and unjustified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 339/2012

Date of Institution : 25.11.2010

Date of Decision : 16.04.2014

Smt. Budhi Devi w/o Shri Lehnu Ram, r/o Village Gadiyara, P.O. Khadihar, Tehsil Joginder Nagar, District Mandi, H.P.

*..Petitioner.**Versus*

1. State of H.P. through its Secretary (Forests) to the Govt. of H.P. Shimla.

2. Principal Chief Conservator of Forests, H.P. Shimla.

3. Divisional Forest Officer, Forest Division Joginder Nagar, District Mandi, H.P.

..Respondents.

Reference/Direct Claim Petition under Section 2-A of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent(s) : Sh. Sanjeev Singh Rana, ADA

AWARD

This is a direct claim petition preferred under Section 2-A of the Industrial Disputes Act, 1947, as amended up-to date ('the Act' for short).

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:

"1. That the services of applicant had been engaged by the respondent no 3 on daily waged basis on muster roll in the month of March 1998 without any appointment order but she had been given the artificial/fictional breaks from her services from time to time up to August, 2009. The applicant had been given the breaks for 95 days in the year 1998, 167=1999, 172=2000, 220=2001, 146=2002, 198=2003, 264=2004, 208=2005, 243=2006, 264=2007, 324=2008, 85=2009. These breaks have been given by the respondent no 3 intentionally to not letting to complete 240 days in each calendar years.

2. That the applicant had been filed the O.A. No 68 of 2001 before the H.P. Administrative Tribunal on 04-10-2001. The Hon'ble Tribunal has directed to State/Respondents to reengage the applicant herein at the same place or in the vicinity of thereof, from where their services were terminated. The respondent has assailed the order of the H.P. Administrative Tribunal and filed a CWP bearing no 1673 of 2002 before the Hon'ble H.P. High Court. The same was dismissed having been withdrawn on 02-12-2002. And respondent again filed the review petition against the judgment dated 04-10-2010 and the same has been dismissed by the Hon'ble H.P. High Court dated 16-07-2010.

3. That it is specifically stated here that during the pendency of this case before the Hon'ble H.P. Administrative Tribunal and Hon'ble High Court the services of applicant have been engaged and disengaged without any specific reason in writing and the services of applicant has been finally terminated by the respondent no 3 w.e.f. 01-09-2009.

4. That before terminating her services by the respondent she has not given any show cause notice in writing, neither charge-sheet had been issued to her against her alleged misconduct nor the one month pay in lieu of notice period and retrenchment compensation under section 25-F has also not paid to her at the time of alleged termination i.e. 01-09-2009 and without complying the same every termination is null, void and ab-initio.

5. That the person who were filed the O.A. 68/2001 along with applicant before the Administrative Tribunal namely Smt. Brahmi Devi W/o Bidhi Chand, Smt. Nirmla Devi W/o Late Sh Dulo Ram, Smt. Krishna Devi W/o Sh Naradhu Ram and Sh Amar Singh S/o Sh Param Singh were regularly engaged by the respondent no 3 from 2001 to onwards and they have not been given any artificial breaks but the services of applicant have been engaged and disengaged time to time for not letting to complete 240 days for the purpose of her regularization as per the policy framed by the state government from time to time.

6. That at the time of her unlawful termination vide verbal order by the respondents dated 01-09-2009 the persons junior to her retained in service namely Sh Kali Dass S/o Sh Manglu Ram R/o Village Ropadu, P.O. Padhwan, Tehsil Padhar, District Mandi, H.P. (July 1998), Prem Chand S/o Sh Sardaru Ram R/o VPO Jalpehar, Tehsil Joginder Nagar, Distt Mandi, H.P. (2005) and some of the daily wager have been retained on muster roll in division level and their services have also been engaged and disengaged and the same has been violated under Section 25-G and 25-H of the Industrial Disputes Act, 1947.

7. That at the time of her engagement and disengagement from her services by the respondent no 3 the work and funds were available in the department whereas junior workmen are retained in service the respondents cannot be say the works and funds were not available.

8. That the act of the respondent to given the fictional breaks to the applicant for the period mentioned above is unfair labour practice and deprived her in permanent status and the same has been violated in the fifth schedule clause 10 of the Industrial Disputes Act, 1947 and the same has also been violated under section 25-T and 25-U read with section 29 of the Industrial Disputes Act, 1947.

9. That the act of the respondents to given the fictional breaks to the applicant from time to time and finally terminated her services w.e.f. 01-09-2009 is highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of Industrial Disputes Act, 1947 and the illegal termination order of the applicant may be set aside on the above ground.

10. That it is categorically submitted here that the applicant was unemployed during her breaks period and still unemployed and not gainfully employed any where from the date of her alleged termination dated 01-09-2009 and he is entitled for full back wages.

Relief:

It is therefore prayed in view of the aforesaid submissions made here in above the Hon'ble Court may kindly be allow the direct claim petition of the applicant and granted the following relief in the favour of applicant.

- (i) The Hon'ble Court may kindly be set aside the unlawful termination order dated 01-09-2009 and directed to respondents to reinstate the services of applicant with full back wages, in continuity of service with seniority and all other consequential service benefits throughout.
- (ii) The Hon'ble Court may kindly be set aside the unlawful break period of fictional breaks for the period from March, 1998 to August, 2009 and directed to respondents to pay the wages of break period and the period be condone in her continuity of service, seniority and all other purposes including regularization".

3. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petition is not maintainable in the present form since no fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The claim petition has become in-fructuous since the claimant/petitioner served under them (respondents) up-to the month of August, 2011 i.e. beyond September, 2009. The petitioner has misrepresented herself. She has approached the Court by concealing the material facts. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, paras 1 to 10 of the reply are reproduced below verbatim for ready reference:-

“1. That the contents of this para of the claim petition are not disputed as long as they pertain with engagement of the applicant w.e.f. March, 1998. However the petitioner had worked intermittently as per her convenience, moreover the forestry works generally depend upon the availability of work and budget and are of seasonal in nature and labourers are being engaged on the availability of works & funds and disengaged when the funds are exhausted. So the contents of the para that the respondent No.3 had intentionally given the artificial/fictional breaks not letting the applicant to complete 240 days in each calendar year are incorrect and hence denied. The mandays chart of the applicant is being attached as annexure R-I.

2. That the contents of this para are admitted. However no relief has been given by the Hon'ble Himachal Pradesh State Administrative Tribunal in O.A. No.68/2001 Brahmi Devi & others V/s State decided on dated 04.10.2001 to the applicant. Copy of the order is being attached Annexure R-II, along with the copy of the O.A. as Annexure R-III.

3. That the content of this para are wrong hence denied. As submitted in para above Hon'ble Himachal Pradesh State Administrative Tribunal has not granted any relief to the applicant. However the applicant was again engaged on seasonal forestry works w.e.f. 10/2001 as per availability of works and fund by the replying respondent. The work was provided to the applicant after she had made herself available for such seasonal works like nursery work, Soil Conservation works and pitting and planting works during this period. The replying respondents had provided the work for whole of the month in particular month, in which applicant had worked with the replying respondent, which is also evident from the manday chart annexure R-I. However the applicant being intermittent worker had absented herself during the course of her engagement and use to report for duty as per own convenience and sweet will.

It is pertinent to mention here that w.e.f. 01.09.2009 to 30.06.2011 the applicant has all together stopped to report for duty and thereafter again got reengaged w.e.f. 07/2011 and left the job w.e.f. 08/2011. Thus the present claim of the applicant for her termination w.e.f. 01.09.2009 has become infructuos. No fundamental right of the applicant had been infringed in any manner by the replying respondent.

4. That the contents of para-4 are wrong, hence denied. The detailed reply has already been given in para-3 above. It is however, submitted that the replying respondent own their part had provided the work to the applicant as and when she has reported for duty. As much as vide notice dated 01.07.2012 the applicant was again called for seasonal forestry work by B.O. Langna through Forest Guard Langna & Sh Inder Singh Forest Worker. The copy of notice is enclosed as annexure R-IV. However in pursuant to the notice Annexure R-IV, the applicant had not reported for duty.

5. That the contents of the para-5 of claim petition are wrong, hence denied. The mandays of the workmen mentioned in this para are being annexed as annexure R-V. Above workmen are also engaged on seasonal forestry works as is the case of the applicant. It is further submitted that on account of the order of Hon'ble Himachal Pradesh State Administrative Tribunal dated 04.10.2011, the copy of which has been placed as annexure R-II the applicant is debarred from claiming parity with workmen mentioned in this para.

6. That the contents of this para are also wrong, hence denied. It is submitted that as per record of this office no junior workmen have been retained in service. Sh Kali Dass S/o Sh Manglu Ram R/o Village Ropadu P.O. Padhwan, Tehsil Padhar, Distt. Mandi have been engaged on work on 01.02.1995 and had worked for 243 days during the year 1995 whereas Sh Prem Chand S/o Sh Sardaru Ram R/o VPO Jalpehar Tehsil Joginder Nagar was engaged on casual labour during

09/1990. Thus the question of violation of Section 25-G and 25-H of the Industrial Disputes Act, 1947 does not arise at all. No daily wager junior to applicant was retained on work by the respondent. The mandays of above workmen are being placed as annexure R-VI.

7. That the contents of this para are wrong, hence denied as per submission made in paras above the forestry works are seasonal in nature and the casual labour is engaged only when work and funds are available with the department and no daily wager junior to applicant was retained on work by the respondent. The casual labour is being regulated on the principal last to come and first to go.

8. That the contents of this para are wrong, hence denied. It is wrongly alleged that the replying respondent are indulging in unfair labour practice relating to the applicant, rather the applicant herself absented due to own act and conduct and has preferred the present dispute at a belated stage. A detailed reply has been given in para above. The replying respondent had not violated any provision of Industrial dispute Act mentioned in this para.

9. That the contents of this para are wrong, hence denied. On account of continuity of service beyond 01.09.2009 the present dispute has become infructuos. Further the applicant has not adhered to the mandatory provision of Section 2-A of Industrial dispute Act with regard to her disengagement.

10. That the contents of this para are wrong, hence denied. It is submitted that the petitioner is gainfully employed for her livelihood as agriculturist and further dependent upon her husband who is a retired employee of H.P.P.W.D.”

In these circumstances, the respondents pray that the petition in hand being meritless be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been pleaded that the forestry works are not seasonal in nature. The State Government has not declared the forest department as a seasonal industry. No show cause notice was ever issued to her regarding her alleged willful absence from duties. She never worked with the respondents after September, 2009. The mandays chart of Shri Prem Chand s/o Shri Sardaru Ram has not been produced by the respondents.

5. Per order dated 08.4.2013, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 01-09-2009 is illegal and unjustified as alleged. OPP
2. Whether the fictional breaks given by the respondents to the petitioner from March, 1998 to August, 2009 are/were illegal and unjustified as alleged? OPP
3. Whether the claim petition is not maintainable in the present form? OPR
4. Whether the petitioner has concealed the true and material facts from the Court as alleged. If so, its effect? OPR
5. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? OPR
6. Whether the petition has become in-fructuous as alleged. If so, its effect? OPR

7. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged? OPR

8. Relief

6. At this stage, I will like to highlight that the demand notice dated 16.4.2009 and supplementary demand notice dated 12.11.2009 were served upon the respondents by the petitioner/workman. Since no reference/notification was issued by the appropriate Government, the direct claim petition was instituted by the petitioner.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	No
Issue No.2 :	Not pressed (See order dated 01.4.2014)
Issue No.3 :	Yes
Issue No.4 :	Yes
Issue No.5 :	No
Issue No.6 :	Not pressed
Issue No.7 :	Not pressed
Relief. :	Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1, 3 AND 4

9. Being interlinked and to avoid the repetition, all these issues are taken up together for discussion and disposal.

10. Smt. Budhi Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that she has raised the present industrial dispute regarding the fictional breaks in service and the final termination of her services on 01.9.2009. She also admitted that she had worked with the respondents for two months in the year 2011. Self stated, she did not serve the respondents after the filing of this case. She admitted that in the month of July, 2012, notice Ex. R1 was sent to her by the department calling upon her to resume the duties. She also admitted that she conveyed to the Forest Guard who approached her with the notice Ex.R1 that she will not report for duty until and unless her case is decided by the Court. She denied that in the months of July and August, 2011, she served the respondents on bill voucher basis as well as the vouchers Mark-B (later on exhibited as Ex. RW1/I) and Mark-C (later on exhibited as Ex. RW1/J) bear her signatures. Volunteered, the payment was made to her for the work done earlier where-after she signed the vouchers. She denied that the work in the forest department is mostly seasonal and at the time of the engagement of her services, it was conveyed to her that the work for the whole year cannot be provided to her. She cannot say that the mandays chart Ex. R2 is correct or not. She is not aware of the fact that after the inquiry, it surfaced that the facts disclosed in the letter Mark-A (corresponding to Ex. PA) are incorrect. Earlier, she had preferred a case regarding the artificial breaks before the Hon'ble Administrative Tribunal. She feigned ignorance about the fact that the Original Application preferred by her was dismissed by the Hon'ble Administrative Tribunal. She denied that her services were engaged for seasonal forestry works

only and she used to be called to discharge her duties as and when the work was available. She refuted that she used to work as per her sweet will and convenience as well as Shri Amar Singh etc. served the department continuously. She denied that to gain the employment in a wrongful manner and derive other undue benefits, she has instituted a phoney petition.

11. Conversely, Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar (respondent No.3) testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he denied that the services of the petitioner were disengaged on 01.9.2009 in an illegal manner and the petitioner never served the department after August, 2009.

12. Ex. RW1/A is the mandays chart relating to the petitioner.

13. Ex. RW1/B is the copy of the order dated 04.10.2001 passed by the Hon'ble Administrative Tribunal in O.A. No.68/2001 titled as Smt. Bramhi Devi and four others versus State of H.P. through the Secretary (Forest) and others.

14. Ex. RW1/C is the copy of the Original Application No.68/2001 instituted by Smt. Bramhi Devi etc. before the Hon'ble Administrative Tribunal. In the Original Application, the petitioner Smt. Budhi Devi was the applicant No.3. 15. Exts. RW1/D to H are the mandays charts of Shri Kali Dass, Smt. Brahmi Devi, Smt. Krishana Devi, Shri Amar Singh and Smt. Nirmla Devi, working under the respondent No.3.

16. Ex. PB is also the mandays chart pertaining to the petitioner.

17. Ex. PC is the notice which was sent to the petitioner by the Range Forest Officer, Langna calling upon her to resume the duties. It corresponds to Ex. R1. The claimant/petitioner has admitted that the notice was received by her. However, she told the Range Forest Officer, who approached her along-with the notice that she will report for duty only after her case is decided by the Court.

18. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wage in the month of March, 1998. The said fact finds support from the mandays charts (Ex. R-2 and Ex. RW1/A) relating to the petitioner which are there on the record.

19. The respondents have not placed/exhibited on the file any document evidencing that the services of the petitioner were engaged for undertaking the seasonal forestry works only to her knowledge. Otherwise too, the mandays chart Ex. RW1/A clarifies that from 01.1.2003 to 31.12.2003, the work for more than 240 days in a calendar year was provided to the petitioner by the respondents. Of course, the petitioner served for only 177 days. A person who is given the work for more than 240 days in a calendar year, cannot be termed as a seasonal worker by any stretch of imagination.

20. As already mentioned, issue No.2 regarding the artificial/fictional breaks in service allegedly provided to the petitioner by the respondents from the date/month of her initial engagement i.e. March, 1998 to the date/month of the alleged final termination of her services i.e. August, 2009 has not been pressed.

21. Now comes the all important question as to whether the services of the petitioner were finally terminated by the respondents on 01.9.2009 (as claimed) or not?

The version of the petitioner is that her services were unlawfully disengaged by the respondents on 01.9.2009. While denying the said fact, the respondents have pleaded that the

petitioner was an intermittent worker. She used to report for duty as per her convenience. From 01.9.2009 to 30.6.2011, the petitioner did not report for duty and abandoned the job. Thereafter, she reported for duty in the month of July, 2011 as well as served during the months of July and August, 2011. After that she again left the job of her own accord and free volition.

22. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon her to resume the duties after she allegedly left the same. The notice Ex. R1 (corresponding to Ex. PC) was served upon the petitioner by the respondents on 01.7.2012 i.e. during the pendency of this case. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for her alleged willful absence from duty. The plea of abandonment put forth by the respondents is not established.

23. There is no cogent and convincing evidence on the record to show that the mandays charts Ex. R2 and Ex. RW1/A produced by the respondents are incorrect. Their perusal discloses that the petitioner had served the respondents in the months of July and August, 2011 as well. During these two months, the petitioner worked on bill voucher basis as is evident from Exts. RW1/I and J. During her cross-examination the petitioner (PW1) initially stated that the bill vouchers Exts. RW1/I and J do not bear her signatures. Subsequently, she volunteered that the payment was made by the respondents for the work done previously where-after she appended her signatures. This admission made by the petitioner goes to show that she had worked under the respondents on bill basis in the months of July and August, 2011 as well as received the payment for the work done by her. In view of these facts, I am at a loss to understand as to how it lies in the mouth of the petitioner to canvass that her services were finally terminated w.e.f. 01.9.2009. The working pattern of the petitioner as disclosed by the mandays charts makes it abundantly clear that she was an intermittent worker, who used to work as per her convenience.

24. Otherwise also, in para 2 of the claim petition, the petitioner has pleaded that she had instituted Original Application No.68/2001 before the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal. The said Original Application was decided by the Hon'ble Administrative Tribunal on 04.10.2001. The Hon'ble Administrative Tribunal had directed the State/respondents to reengage her (petitioner's) services at the same place or in the vicinity from where her services were terminated. Browsing of Exts. RW1/B and C reveals that in the Original Application No.68 of 2001, the petitioner Smt. Budhi Devi was the applicant No.3 before the Hon'ble Administrative Tribunal. In-fact, per order dated October 4, 2001, the copy of which is Ex. RW1/B, no relief was granted to the petitioner/applicant No.3 by the Hon'ble Administrative Tribunal. This goes to show that the petitioner is telling nothing else except a bundle of lies. She has concealed the true and material facts from the Court. Her act and conduct disentitles her to the relief(s) claimed.

25. Such being the situation, I have no hesitation to conclude that the claim petition is not maintainable. The petitioner has not approached the Court with clean hands because of which she is required to be non-suited. Her services were not finally terminated by the respondents on 01.9.2009 as alleged. It appears to me that the avarice of the petitioner to grab the Government job and money forced her to prefer a totally false and baseless claim.

26. These issues are decided against the petitioner and in favour of her adversaries.

ISSUES NO.2,6 AND 7

27. Not pressed.

ISSUE NO. 5

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondents.

RELIEF (ISSUE NO.8)

30. As a sequel to my findings on the issues No. 1, 3 and 4 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of April, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. Ref: No. : 57/2013

Sh. Maghu Ram s/o Sh. Manas Das, r/o Village & P.O. Mindhal, Tehsil Pangi, Distt. Chamba, H.P. ..Petitioner.

Versus

The Divisional Forest Officer, Killar, Distt. Chamba, H.P.

..Respondent.

17-04-2014 Present : Petitioner with Sh. Rohit Singh, Adv.

Sh. Sanjeev Singh Rana, D.D.A. for the respondent.

One PW recorded. At this stage, the claimant/petitioner has given a separate statement that he does not want to proceed with the instant claim petition/reference and it be dismissed as withdrawn.

2. Ordered accordingly. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 11/2014

Sh. Nathu Ram s/o Late Shri Babu Ram, V.P.O. Taloi, Tehsil Amb, District Una, H.P.

..Petitioner.

Versus

The Managing Director/Employer, M/S Tigaksha Metalics Pvt. Ltd., Plot No. 16, Ram Nagar, Industrial Area Gagret, Tehsil Amb, District Una, H.P.

..Respondent.

29-04-2014 Present : None for the petitioner.

Sh. Rajesh Kosh, Law Officer for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the claimant/petitioner. He is absent despite personal service It is already 2.40 p.m. This indicates that the petitioner is not interested to pursue the matter. For want of statement of claim/demand, it cannot be said that termination of the services of the petitioner by the respondent is illegal and unjustified. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

4. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 103/2014

Sh. Yash Pal s/o Shri Telu Ram, r/o Village Bhatoli, Tehsil & District Una, H.P.

..Petitioner.

Versus

The Employer/Factory Manager, M/S A.K. Industries, Plot No. 124, Industrial Area
Mehatpur, Tehsil & District Una, H.P.

..Respondent.

29-04-2014 Present : Sh. Vijay Kaundal, Adv. csl. for the petitioner.

Sh. Deepak Dhacholia, Manager for the respondent.

Ld. csl. for the claimant/petitioner has made the below given statement in the Court today:-

“ The matter has been compromised. In view of the affidavit (copy mark-A) sworn by my client, I do not want to proceed with this reference. It be dismissed as withdrawn/compromised.

RO & AC

P.J.”

Sd/-

29-04-2014

2. Ordered accordingly. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 45/2013

Sh. Ghanshyam s/o Sh. Madan, r/o Village Baragat, P.O. Behli, Sub Tehsil Nihri, Distt. Mandi, H.P. ..Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, Distt. Mandi, H.P. ..Respondent.

30-04-2014 Present : Sh. S.S.Sippy, A.R. for the petitioner.
Sh. Sanjeev Singh Rana, D.D.A. for the respondent.

The case is listed for final arguments, but the ld. Authorised Representative for the claimant/petitioner has made the below given statement in the Court today:-

“ I do not want to proceed with this reference/claim petition . It be dismissed as withdrawn. My client will issue a fresh demand notice to the respondent for the redressal of his grievances.

RO & AC

P.J.”

Sd/-

30-04-2014

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. Be consigned to the Records after due completion.

Announced:

(Rajan Gupta),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 58/2014

Sh. Jai Singh s/o Shri Vishnu Ram, r/o Village Mehar, P.O. Basona, Tehsil Joginder Nagar, District Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.

..Respondent.

01-05-2014 Present : None for the petitioner.

Sh. Sanjeev Singh Rana, D.D.A. for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the claimant/petitioner. He is absent despite knowledge. It is already 2.30 p.m. This indicates that the claimant/petitioner is not interested to pursue the matter. For want of statement of claim/demand, it cannot be said that time to time termination of the services of the petitioner by the respondent (as per the reference) is/was illegal and unjustified. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

4. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 118/2013

Pradhan/General Secretary, H.P. State Handicrafts and Handloom Corporation Workers Union, Rang Mahal, Chamba, Himachal Pradesh.

..Petitioner.

Versus

1. The Managing Director, H.P. State Handicrafts and Handloom Corporation, Kasumpti, Shimla-9.

2. The Manager, H.P. State Handicrafts and Handloom Corporation Rang Mahal, Chamba, H.P.
..Respondents.

01-05-2014 Present : Smt. Vidhya Devi, Pradhan of the Workers union and Sh. Ramesh Kumar, General Secretary of the Workers union with Sh. Jitender Sharma, Adv.
Sh. Vivek Vashisht, Adv. csl. for the respondents.

The case is listed for final arguments today, but an application under Order 23 Rule 1 C.P.C. for withdrawal of the reference/claim petition with permission to file a fresh one on the same cause of action has been moved by the applicant/petitioner union. The said application is allowed in view

of the reasons recorded therein and being not opposed. Consequently, the reference and claim petition are dismissed as withdrawn. It is clarified that the applicant/petitioner union will be at liberty to issue a fresh demand notice and prefer fresh claim petition for the redressal of its grievances. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

4. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUMINDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 50/2013

Date of Institution : 13.06.2013

Date of Decision : 01.05.2014

Shri Mohan Lal s/o Shri Gurdayal, r/o Village Hugal, P.O. Karias, Tehsil Pangi, District
Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, Killar Division, HPPWD, Killar, District Chamba, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
: Sh. R.K. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Mohan Lal S/O Shri Gurdayal, R/O Village Hugal, P.O. Karias, Tehsil Pangi, District Chamba, H.P. w.e.f. October 2008 by The Executive Engineer, Killar Division, HPPWD, Killar, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on muster roll basis by the respondent in the month of July, 2002. He worked as such up-to the month of October, 2008 under the Assistant Engineer, Store Sub Division, HPPWD, Shour (Pangi). During the period of employment, his services were engaged and disengaged by the respondent despite the availability of the work and the funds. Artificial breaks in service were provided by the respondent so that he (petitioner) does not complete 160 days of work (Pangi is tribal area) in each and every calendar year for the purpose of the regularization of his services. The persons junior to him were provided continuous work by the respondent which amounts to unfair labour practice. In the month of October, 2008, his services were finally terminated by the respondent. Before the disengagement of his services, neither any notice was given to him nor an inquiry was conducted against him. One month pay in lieu of the notice period and the retrenchment compensation were also not paid by the respondent/department. At the time of the retrenchment of his services, the persons junior to him namely Shri Jeet Singh and Smt. Janto Devi etc. were retained in service by the respondent. The latter failed to abide by the principle of 'last come first go'. Not only this, after the termination of his services new/fresh hands were engaged by the respondent.² The names of the newly appointed persons are S/Sh. Ram Singh and Dev Raj etc. He was not given an opportunity of re-employment. The services of the persons junior to him viz. Shri Jeet Singh and Smt. Bimlo Devi etc. have already been regularized by the respondent as per the policy of the State. He (petitioner) is also entitled to the regularization of his services after completion of eight years service in the regular pay scale. The break period is required to be counted for the purpose of continuous service. From the date of his final termination, he is unemployed. Demand notice dated 26.8.2011 served upon the respondent did not have the desired effect. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause, the petitioner has claimed the following relief(s) in this case:-

- “1. The Hon'ble Court may kindly be set aside the illegal termination order w.e.f. October, 2008 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service along with all consequential service benefits throughout.
2. The Hon'ble Court may kindly be again directed to respondent to regularize the services of applicant after completion of 10 years continuous service as per the policy of Mool Raj Upadhaya.
3. Any other relief the Hon'ble Court may deem fit may kindly be granted in the favour of applicant and against the respondent”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager in the month of July, 2002. However, it has been pleaded that neither any artificial break in service was provided to the petitioner/workman nor his services were finally terminated as alleged. Actually, the petitioner was an intermittent worker. He used to report for duty as per his convenience because of which he could not complete 160 days of continuous service. In the month of October, 2008, the petitioner left the job voluntarily. Since the petitioner abandoned the job, he

is not entitled to any protection under the Act. No person junior to the petitioner has been retained in service. Even no new/fresh hands have been appointed. The persons, whose names have been disclosed by the petitioner in para No.4 of the claim petition, were appointed on compassionate grounds. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services as claimed. He is gainfully employed as an agriculturist. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 16.11.2013, following issues were struck.

1. Whether the termination of the services of the petitioner by the respondent in the month of October, 2008 is illegal and unjustified as alleged? OPP

2. Whether the claim petition is not maintainable in the present form? OPR

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? OPR

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. The petitioner Shri Mohal Lal stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he used to absent from his duties as per his convenience. He also denied that he left the service willingly in the month of October, 2008. Further, he denied that no person junior to him is serving the respondent/department and the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri M.P. Dhiman, Executive Engineer, HPPWD, Division Killar-Pangi (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that after the petitioner left the job, no notice was given to him asking him to resume his duties. Even no departmental proceedings were initiated against the petitioner. He denied that he has given a phoney statement.

10. Ex. PW1/B is the copy of the seniority list of daily waged workers upto 31.12.2009 in respect of Killar Sub Division No.1, HPPWD, Killar (Pangi).

11. Ex. RW1/A is the mandays chart relating to the petitioner.

12. No reference has been received from the appropriate Government regarding providing the artificial/fictional breaks in service to the petitioner by the respondent during the course of the employment as alleged. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference as per the mandate of Section 10(4) of the Act.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager in the month of July, 2002 and he worked as such up-to the month of October, 2008. The version of the petitioner is that in the month of October, 2008, his services were finally terminated by the respondent wrongly and illegally. While denying the said fact, the respondent has pleaded that the petitioner was an intermittent worker. He used to work as per his convenience. In the month of October, 2008, the petitioner left the job of his own accord and free volition.

14. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was given to the petitioner calling upon him to resume his duties after he allegedly left the same. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

15. It is not the case of the petitioner that the mandays chart Ex. RW1/A produced by the respondent is incorrect. Its perusal discloses that the petitioner did not complete 160 days of work in a block of 12 calendar months preceding the date/month of his termination i.e. October, 2008 as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

16. Ex. PW1/B viz. the copy of the seniority list unfolds that Shri Dev Raj was appointed by the respondent in the year 2005, whereas, Sh. Ram Singh s/o Shri Prem Lal and Shri Ram Singh s/o Shri Bir Chand were appointed by the respondent in the year 2006. They are/were junior to the petitioner whose services were engaged in the month of July, 2002. These three workers served the respondent/department in the year 2009 i.e. after the disengagement of the services of the petitioner. This indicates that the respondent failed to abide by the principle of 'last come first go'. His action thus contravenes the provisions of Section 25-G of the Act.

17. Not only this, Ex. PW1/B reveals that one Shri Mohinder Singh was appointed by the respondent as a beldar in the year 2009 i.e. after the termination of the services of the petitioner in the month of October, 2008. There is nothing on the record to show that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner by the respondent. That being so, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 160 days of work in a block of 12 calendar months anterior to the date/month of his termination.

18. Such being the situation, I have no hesitation to conclude that the termination of the services of the petitioner by the respondent is illegal and unjustified.

19. This issue is decided in favour of the petitioner and against the respondent.

20. Not pressed

ISSUE NO.3

21. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

22. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon’ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

“19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

23. In Mohan Lal’s case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon’ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.

24. Now comes the all important question as to what relief should be granted/awarded to the petitioner?

The record shows that the petitioner was appointed as a daily waged beldar in the month of July, 2002 and he served the respondent/department intermittently up-to the month of October, 2008. In the years 2004 and 2005, the petitioner served for less than 100 days whereas in the year 2007 he did not work for a single day. The disengagement of the services of the petitioner has been held to be bad in the eyes of law in view of the provisions contained in Sections 25-G and 25-H of the Act. In the statement of claim/demand, the petitioner has mentioned that the demand notice dated 26.8.2011 was served upon the respondent by him. The copy of demand notice has not been placed/exhibited on the file. In accordance with the pleadings, the demand notice was given to the respondent by the petitioner almost three years after the termination in question.

25. To my thinking, the petitioner (Shri Mohan Lal) is not entitled to the reinstatement of his services keeping in view all the relevant factors including the mode and manner of his appointment, nature of the employment and the length of service etc., more so, when he worked for less than 100 days in the years 2004 and 2005 as well as did not work for a single day in the year 2007. In none of the calendar years, the petitioner completed 160 or more days of work. While deposing in the Court as PW1, the petitioner has given his age as 45 years. In the cross-examination, he admitted that he earns his livelihood by doing the work of agriculture. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

26. Taking into consideration the above noted facts and the trite laid down in Mohan Lal's case (cited above), in my considered opinion, the ends of justice will be met if the respondent is directed to pay a sum of Rs.20,000/- as compensation to the petitioner in lieu of the reinstatement of his services and other consequential benefits, if any.

27. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.4)

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the respondent in October, 2008 is set aside and quashed. The respondent is directed to pay a lump sum amount of Rs.20,000/- (twenty thousand only) as compensation to the petitioner in lieu of the reinstatement of his services as well as other consequential benefits, if any. Such amount will be paid by the respondent to the petitioner or deposited in this Court within a period of 60 days from today failing which he (respondent) will be liable to pay the interest @ 9% per annum on the said amount from the date of the institution of this reference i.e. 13.06.2013 till the date of payment/deposit. Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of May, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 79/2013

Date of Institution : 02.08.2013

Date of Decision : 01.05.2014

Shri Kishori Lal s/o Shri Tulsi Ram, r/o Village Guddan, P.O. Trella, Tehsil Churah, Distt. Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, HPPWD Division, Pangi at Killar, Distt. Chamba, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. R.K. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Kishori Lal S/O Sh. Tulsi Ram by the The Executive Engineer, HPPWD Division, Pangi at Killar, Distt. Chamba, H.P. w.e.f. Year, 2006 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a beldar in the month of April, 2001 by the respondent. He continuously worked as such up-to the month of October, 2007 in HPPWD Sub Division, Shor. On 1st November, 2007, his services were terminated by the respondent by a verbal order. He had completed more than 160 days of work (Pangi is tribal area) in a block of 12 calendar months preceding the date of his termination. Before the disengagement of his services, no notice was served upon him by the respondent. At the time of the termination of his services, the persons junior to him were retained in service by the respondent. The latter failed to abide by the principle of ‘last come first go’. He requested the respondent time and again to re-engage his services, but in vain. Finally, in the month of December, 2007, the respondent refused to re-employ him despite the availability of the work and the funds. A demand notice dated 28.1.2008 was served upon the respondent by him, but of no avail. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is evident from the prayer clause, the petitioner has claimed the following relief(s) in this case:-

“1. That the applicant kindly be ordered to be re-engaged by the respondents on the same post of Beldar as at the time of his termination with continuity of service, back wages and consequential benefits.

2. That the services of the applicant be ordered to be regularised from the date of his completion of 160 days of service on his respective post of Beldar in regular pay scale of the post with arrear of pay allowance and consequential benefits”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petition is bad for non-joinder of the necessary parties and mis-joinder of the parties. It suffers from the vice of delay and laches.

On merits, it has been denied that the services of the petitioner were engaged as a beldar in the month of April, 2001. Actually, the petitioner was appointed in the month of April, 2002. He worked till October, 2006 in Satrundi Section. The services of the petitioner were never disengaged as alleged. He left the job of his own. The petitioner does not fulfill the criteria fixed by the Government of Himachal Pradesh of 240 days service in each calendar year continuously for eight years for the regularization of his services in the non-tribal area. The petitioner, who was serving in the non-tribal area did not complete 240 days of work in any calendar year of his engagement. He was never sincere towards his duties. No person junior to the petitioner has been retained in service. Even no new/fresh hands have been appointed after the alleged termination. Since the petitioner willingly left the service, he is not entitled to any protection under the Act. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that he is serving in the tribal area. 160 mandays are required for the regularization of his services. Break in service, if any, was illegally given by the respondent. He never abandoned the job.

5. Per order dated 23.10.2013, following issues were struck.

1. Whether the termination of the services of the petitioner by the respondent during the year 2006 is illegal and unjustified as alleged? OPP
2. Whether the petition is not maintainable in the present form? OPR
3. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
4. Whether the petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No
 Issue No.2 : Yes
 Issue No.3 : Not pressed
 Issue No.4 : No
 Issue No.5 : Not pressed.
 Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Kishori Lal stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he served as a beldar from April, 2002 to October, 2006. He denied that he used to absent from his duties and left the job in the month of October, 2006. He admitted that no intentional break in service was given to him by the respondent. He refuted that no person junior to him is serving the respondent/department and he is not entitled to the re-employment etc.

10. Conversely, Shri M.P. Dhiman, Executive Engineer, HPPWD, Division Killar-Pangi (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. He also stated that the petitioner was serving in Bairagarh Section which is non-tribal area.

In the cross-examination, he denied that the services of the petitioner were engaged in the month of April, 2001. He admitted that when the petitioner left the job, no notice was given to him asking him to resume his duties. Even no departmental proceedings were initiated against the petitioner. He denied that he has given a phoney statement.

11. Ex. RW1/A is the mandays chart relating to the petitioner.

12. The petitioner (PW1) has not placed/exhibited on the record any document evidencing that his services were initially engaged by the respondent as a daily waged beldar in the month of April, 2001 and he continuously worked as such up-to the month of October, 2007. Rather, during the cross-examination, the petitioner (PW1) admitted that he served the respondent/department from April, 2002 to October, 2006 only. The said fact finds support from the mandays chart Ex. RW1/A.

13. The version of the petitioner is that on 1st November, 2007, his services were terminated by the respondent by a verbal order wrongly and illegally. While denying the said fact, the respondent has pleaded that the petitioner was not a sincere worker. He left the job of his own accord and free volition in the month of October, 2006. As already mentioned, during his crossexamination, the petitioner (PW1) admitted that he served the respondent/department only up-to October, 2006.

14. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It has come in the statement of the respondent (RW1) that no notice was given to the petitioner calling upon him to resume his duties after he allegedly left the same. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

15. It is not the case of the petitioner that the mandays chart Ex. RW1/A produced by the respondent is incorrect. Its perusal discloses that the petitioner did not complete 240/160 days of work in a block of 12 calendar months preceding the date of the alleged termination as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

16. The petitioner has not disclosed the name of any person junior to him, who was allegedly retained in service by the respondent at the time of the termination in question. Not only this, the petitioner has failed to divulge the name of any person who was appointed by the respondent after the alleged termination of his services. For these reasons, it cannot be said that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

17. Otherwise too, Section 10(4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. As per the reference received from the appropriate Government, this Court is required to decide as to whether the final termination of the services of the petitioner by the respondent in the year 2006 is/was illegal and unjustified or not? The termination, which allegedly took place in the year 2006, has not been impugned by the claimant/petitioner on any count. Rather, his version is that his services have been unlawfully terminated by the respondent on 1st November, 2007.

18. Such being the situation, I have no hesitation to conclude that the disengagement of the services of the petitioner by the respondent is neither illegal nor unjustified. The claim petition is not maintainable in the present form. No provision of the Act has been infringed by the respondent.

19. These issues are decided against the petitioner and in favour of his opponent.

ISSUES NO. 3 AND 5

20. Not pressed

ISSUE NO.4

21. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was

allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

22. This issue is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.6)

23. As a sequel to my findings on the issues No. 1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of May, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 04/2013

Sh. Bir Singh s/o Shri Dole Ram, r/o Village Lagriana, P.O. Panjain, Sub Tehsil Bali Chowki, District Mandi, H.P.

..Petitioner.

Versus

The Executive Engineer, B&R Division, HPPWD Gohar, District Mandi, H.P.

..Respondent.

05-05-2014 Present : Petitioner in person.

Sh. Sanjeev Singh Rana, D.D.A. for the respondent.

The claimant/petitioner has made the below given statement in the Court today:-

“ मेरी सेवायें प्रतिवादी ने पहले ही regular कर दी हैं । मैं यह मुकदमा न चलाना चाहता हूँ। दाखिल दफ्तर किया जावे।

RO & AC

P.J.”

Sd/-

05-05-2014

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
 CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 125/2011

Date of Institution : 16.11.2011

Date of Decision : 05.05.2014

Smt. Renu Mehra w/o Late Shri Dev Raj, Ex-Peon, r/o Old Chari Road Sudhead, Near Sh. C.L. Mehra Niwas, Dharamsala, District Kangra, H.P.

..Petitioner.

Versus

The Principal, BD DAV Senior Secondary Public School, Kotwali Bazar, Dharamsala, District Kangra, (H.P.)

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Jitender Sharma, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Renu Mehra W/O late Sh. Dev Raj, Ex-Peon, R/O Old Chari Road Sudhead, Near Sh. C.L. Mehra Niwas, Dharamsala, Distt. Kangra, H.P. as Peon by The Principal, BD DAV Senior Secondary Public School, Kotwali Bazar, Dharamsala, Distt. Kangra (H.P.) w.e.f. 26.9.2009, without issuing charge sheet, without conducting enquiry and without complying with the provisions of the Industrial Disputes Act,

1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits, the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:-

"1. That the services of applicant have been engaged by the respondent as Class IV (Peon) in the year 2000 and she had continued worked up to 25.09.2009 and during the above said period her work and conduct was fully satisfactory up to the mark and she had not given any chance for her complaint to her superior as well as the management of the institution. It is submitted during her services with the management she had allowed to discharged her duties as like cleaning in guest room, staff room, stationary room and in corridor, given the tea as per requirement of officers and teachers of institution and provided the files to teachers and clerks from the office of Principal and after close the school she had cleaning the four classes and corridor every day as per the instruction of respondent.

2. That when all of sudden her services have been unlawfully terminated by the respondent without any notice and before terminating her services she has not served any show cause notice, charge sheet against her alleged misconduct neither the enquiry had been conducted against her and the retrenchment as required under section 25-F (b) has not paid to her at the time of her unlawful termination i.e. 26.09.2009 and without complying the same every termination is null, void and ab-initio.

3. That it categorically submitted here that one month notice pay has also not paid to the applicant under Section 25-F (a) of the Ibid Act at the time of her unlawful termination i.e. 26.09.2009 but the same has been paid to her amounting Rs.1600/- vide letter no DAV/PS/KB/1951-52 dated 26.10.2009 which has been sent to the bank by the respondent through above registered letter no in her account no 5080 in State Bank of India, Branch Dharamshala and copy of the same has been sent to her for her information and the information for termination of her services has not intimated to the appropriate government i.e. Labour Commissioner, Himachal Pradesh under Section 25-F (c) of the Industrial Disputes Act, 1947 and without complying the same every termination is null, void and ab-initio. Whereas the applicant has been completed more than 240 days in each calendar years as well as last twelve calendar preceding months from the date of her unlawful termination. Even that the respondent have own service by laws which is applicable to the every employees of the institution has also been violated by the respondent and the same has been violated against the principle of natural justice.

4. That it is specifically stated here that at the time of her appointment as peon she had fixed in consolidated salary and at the time of her termination she was given Rs.1600/- per month by the management which is less under the Minimum Wages Act, 1948 whereas the respondent institution is covered under the Schedule Industry as covered by Labour Commissioner, Himachal Pradesh under the Minimum Wages Act and the applicant is entitled minimum wages as fixed by the state government to the category of Peon as unskilled category for the period from 2000 to 26.09.2005 as such the state government has fixed the minimum wages of unskilled category in the year 2000 Rs 1530/- per month, 01.08.2001 Rs 1650/- per month w.e.f. 01.08.2002 Rs 1800/- per month, w.e.f. 15.03.2003 Rs 1950/- per month, w.e.f. 15.05.2005 Rs 2100/- per month, w.e.f. 01.07.2007 Rs 2250/- per month, w.e.f. 01.01.2008 Rs 3000/- per month, w.e.f. 01.03.2009 Rs 3300/- per month. It is submitted here that the respondent have been made the less minimum wages to the applicant for the aforesaid period and she is entitled difference of wages from year, 2000 to 26.09.2009 along with interest @ 12% per annum. It is again submitted here that

on her demand to pay her to the respondent to pay her minimum wages as fixed by the state government from time to time and the same has refused by the respondent and due to this point her services have been unlawfully terminated by the respondent.

5. That at the time of her appointment she has not given any appointment order and also not given wages slip under the Payment of Wages Act, 1936 which is mandatory under and all the relevant record of the applicant is under the possession of respondent and the respondent be produce the wages register to the applicant along with detail of payments for the period from 2000 to 26.09.2009 for the purpose of determine the point of less wages paid to applicant.

6. That the act of the respondent to terminated the services of applicant w.e.f. 26.09.2009 is highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 and the same may kindly be set aside on the above mentioned ground.

7. That it is submitted here that the applicant is still unemployed and not gainfully employed anywhere after her illegal termination dated 26.09.2009 and the petitioner is entitled for full back wages in this ground.

Relief Sought,

It is therefore prayed in view of the aforesaid submissions made here in above the Hon'ble Court may kindly be granted the following relief in the favour of applicant.

- (i) The Hon'ble Court may kindly be set aside the illegal termination order dated 26.09.2009 and directed to respondent to reinstate the services of applicant with full back wages, in continuity of service, seniority with all other consequential service benefits.
- (ii) The Hon'ble Court again may kindly be determine the less wages paid to applicant for the period from year, 2000 to 26.09.2009 under the Minimum Wages Act, 1948 and directed to respondent to pay the difference of wages to the applicant along with interest @ 12% per annum and litigation cost of Rs 5000/-."

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable. The petitioner is estopped to sue by her act and conduct. She has suppressed the material facts from the Court and has not come to the Court with clean hands. Since the petitioner is/was a contractual appointee, she has no locus standi to sue.

On merits, paras 1 to 6 of the reply are reproduced below verbatim for ready reference:-

"1. That the contents of para No.1 of the claim petition are wrong hence denied in toto. It is absolutely wrong that the applicant have been engaged by the respondent as a class-IV (peon) in the year 2000. It is worth mentioning that the applicant was appointed w.e.f. 01-04-2009 to 31-03-2010 as a Bal Sevika and her service was purely temporary as per the memorandum number T & NT/TEMP STAFF/2009 vide dated 30-03-2009, photocopy of which is annexed as Annexure R-1. The terms and condition of the memorandum R-1, were duly explained and the applicant signed the same after accepting of terms and condition of her appointment. It is absolutely wrong, that during the period of appointment of the applicant, the work and conduct of the applicant was fully satisfactory

upto the mark. It is also wrong that the applicant had not given any chance, for her complaint, to her superior as well as management of the instruction. It is pertinent to state that the applicant was appointed as a Balsevika and nature of the duties of this post includes apart from the duties mentioned by applicant, also to take care of the small children of the school, and to do some other work of assistance as per the requirement of the school.

2. That the contents of para No.2 of the complaint petition are absolutely wrong, hence denied in toto. It is wrong that the services of the applicant was terminated unlawfully and it is also wrong that the service of the applicant was terminated all of the sudden as alleged by her. In fact, the applicant was given ample opportunity to mend her self and when the applicant fails to do so, her service were terminated as per the provision of law. photocopy of termination letter is annexed as Annexure-R2. The applicant was also given one month salary, which is admitted by her, in para No.3 of the claim petition itself. The copy of the letter vide which, the applicant was intimated about the transfer of amount in her account, in lieu of one month. (Photocopy of notice is annexed as Annexure R-3). This para of the petition is totally in contravention to the admission made in para No.3 of the claim petition. It is worth mentioning that various complaints of different dated, received against the applicant from the employees as well as the parents of the children. (The photocopies of which are annexed as annexure R-4 to R 13). It is submitted that the applicant has admitted her self that she had been paid Rs.1600/- vide Annexure R-3. It is pertinent to state that since the employment of the petitioner was purely on contractual basis, so that the petitioner was paid one month salary in accordance, though the condition of the Annexure R-1 i.e. memorandum, specifically states that “her services are liable to be terminated at any time without notice”. The termination of the services of the applicant is in accordance with law and not null void and ab-initio, as alleged by the applicant.

3. In reply to para No.3, it is submitted that the contents of this para are admitted to be correct to the extent that Rs.1600/- were deposited in the account No.5080 of the applicant on 20- 10-2009 by the respondent. Rest of the contents of this para are denied being false and incorrect. It is worth mentioning that the applicant had worked only less then 180 days from the date of her appointment as Balsevika and her services, as clear from the annexure R-1, was purely contractual, so the prevision of the section 25 (F) (c) are not attracted as alleged by the applicant in this para. The mandatory provisions of the I.D. Act, 1947 were duly followed and due to the various complaints received against the applicant, the respondent was left with no other option but to terminate the service of the applicant. It is further submitted that in order to maintain the decorum of the institution, it became mediatory for the respondent to terminate the services of the applicant, as complaints against the applicant were of a serious nature. No principle of natural justice was violated. The applicant was even paid one month salary in lieu of the notice. The respondent tried her level best and ask the complainant to rectify her behaviour with the staff and children many a times, but when the applicant instead of mending her basis, repeatedly went on to continue, her apathy and behavior towards the staff as well as the small children, then the respondent was compelled to terminate the service of the applicant. The services of the applicant were terminated as per the provision of the law. The various compliant received against the applicant are self explanatory, which is annexed as Annexure R-4 to R-13.

4. That this para of the petition is totally misleading, as the provision of this para are centralized for the post of peon. As motioned above the applicant was never appointed as peon but only appointed as a Balsevika, as clear from the Annexure R-1, with consolidated salary of Rs.1600/- only which was duly accepted by her. (Consent of this

effect is on the memorandum R-1, with her signature on page-2). The alleged notification of minimum wages alleged in this para are not applicable to the preset applicant. It is wrong to alleged that the applicant is entitled for difference of wages from 2000 to 26-09-2009, the ultimate date of termination. It is wrong that on demanded by the applicant, the respondent terminated the services of the applicant. In fact annexure R-2 dated 26-09-2009 is self explanatory, which clearly indicate that due to negative attitude and metal harassment caused to the small children by the applicant, the services of the applicant were terminated.

5. In reply to para No.5, it is submitted that the contents of this para are absolutely wrong, hence denied into. The memorandum of the appointment Annexure R-1, on page No.2 bears the signature of the applicant which clearly shows that the applicant had accepted the terms and conditions, so the petitioner in order to mislead the Hon'ble Tribunal has concocted a false story. The consolidated wages were duly paid to the applicant in accordance with law in her account. The applicant never worked from the year 2000 as alleged by her with the respondent. The appointment order was duly conveyed and supplied to the applicant.

6. That the contents of para No.6 and 7 of the claim petition are wrong, hence denied in toto. The services of the applicant were terminated as per the provisions of law and after 26-09-2009 the applicant was not employee of the respondent and is not entitled for full back wages as alleged in the claim meditation. Attendance Register (copy is Annexed As Anner R-14)".

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that from the year of her initial engagement i.e. the year 2000 to 25-09-2009, she discharged her duties as a peon. Memorandum dated 30.3.2009 (annexure R-1) was not issued in her name by the respondent. Her services were not engaged on contract basis. The respondent/school has its own service rules. As per those rules, no employee can be appointed on contractual basis. She (petitioner) served for more than 10 years on temporary/casual basis. Her services were engaged as a regular employee w.e.f. 01.4.2009 after temporary status of more than 10 years.

5. Per order dated 20.04.2012, following issues were struck.

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 26-09-2009 is illegal and unjustified? OPP
2. Whether the petition is not maintainable in the present form? OPR
3. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged? OPR
4. Whether the petitioner has the locus-standi to sue? OPP
5. Whether the petitioner has not come to Court with clean hands as alleged. If so, its effect? OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Not pressed
Issue No.3 :	Not pressed
Issue No.4 :	Yes
Issue No.5 :	Not pressed
Relief. :	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Smt. Renu Mehra (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that her services were engaged as a Bal Sevika on temporary basis from 01.4.2009 to 31.3.2010. She denied that the memorandum dated 30.3.2009, the copy of which is Ex. R1, in this regard was prepared and it bears her signatures in the red circle. She admitted that the consolidated salary of Rs.1600/- per month was being paid to her by the respondent. She denied that she used to quarrel with the school staff and irritate the students. She also denied that the respondent asked her many times to improve her behaviour, but in vain. Further, she denied that her services were terminated so as to maintain decorum/discipline in the school. She admitted that the agreed amount of pay was paid to her regularly by the respondent/school. She also admitted that the wages for the period she worked in the school have been paid to her.

9. Conversely, Shri S.H. Khan, Principal, BD DAV Senior Secondary School, Dharamshala (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that on the basis of the complaints received against the petitioner, neither she was charge-sheeted nor a show cause notice was ever issued to her. He denied that the services of the petitioner were initially engaged in the year 2000. Self stated, she was appointed in the year 2001 on part-time basis. He denied that the services of the petitioner were engaged as Aaya-cum-peon. Volunteered, she was Bal Sevika. He admitted that the services of the petitioner were terminated on 26.9.2009. He also admitted that before the disengagement of the services of the petitioner, neither any notice under Section 25-F of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) was given to her nor the retrenchment compensation was paid. He denied that the services of the petitioner were disengaged unlawfully.

10. Exts. PW1/B, C and D are the copies of the replies/letters written by the respondent to the Labour Inspector, Kangra at Dharamshala, on 01.12.2009, 03.5.2010 and 26.7.2011, respectively, during the conciliation proceedings.

11. Ex. PW1/E is the copy of the demand notice served upon the respondent by the petitioner under Section 2-A of the Act.

12. Ex. R2 is the copy of the termination letter dated 26.9.2009 served upon the petitioner by the respondent. The receipt of this letter was allegedly refused by the petitioner/claimant.

13. Ex. R3 is the copy of a letter dated 20.10.2009 written to the Manager, Bank of India, Dharamshala by the respondent. Vide this letter the Manager of the Bank was requested to transfer a sum of Rs.1600/- only in the account of Smt. Renu Mehra (petitioner) for the month of October, 2009, in lieu of one month notice.

14. Ex. RW1/B is the copy of envelop of the registered letter, which was sent by the respondent to the petitioner. As per the report made by the postal authorities, the receipt of the registered letter was refused by the petitioner/addressee.

15. Ex. RW1/C is the copy of a letter dated 23.6.2009 written by the petitioner to the respondent. In this letter, the petitioner mentioned that on 22.6.2009, she reached the school late as the Jeep in which she was traveling broke down. She requested the respondent/Principal to pardon her for reaching the school late.

16. Exts. RW1/D to M are the copies of various complaints, which were received by the respondent on different dates against the petitioner, from the school employees.

17. Ex. RW1/N is the copy of the attendance register for the months of April, 2009 to October, 2009 relating to the petitioner and other staff members of the school.

18. Exts. RW1/O to V are the details of working days pertaining to the petitioner and others.

19. Ex. RA is the copy of the Saving Bank Account of the petitioner maintained by her in the Bank of India, Dharamshala Branch.

20. Ex. RB is the copy of the Service Rules for employees working in the school.

21. The petitioner has not placed/exhibited on the record any document evidencing that her services were initially engaged by the respondent as a class-IV (Peon) in the year 2000. The respondent (RW1) in his cross-examination stated that the petitioner was appointed as a Bal Sevika on part-time basis in the year 2001. The said fact finds support from Exts. RW1/O to V viz. the list of the employees appointed on casual basis by the respondent. These documents also highlight the working days of the petitioner.

22. The assertion of the respondent that the services of the petitioner were engaged for the first time vide memorandum dated 30.3.2009, the copy of which is Ex.R1, appears to be totally false and baseless in view of the evidence available on the file. As already mentioned, the respondent (RW1) admitted that the services of the petitioner were initially engaged way back in the year 2001. Otherwise too, in the letter dated 26.7.2011, the copy of which is Ex. PW1/D, written by the respondent to the Labour Inspector, Kangra at Dharamshala, it has been mentioned that the petitioner worked as a full time worker from 03.12.2007 to 31.3.2009. It is not the case of the respondent that the service conditions of the petitioner were changed after issuing the notice as envisaged under Section 9-A of the Act. Therefore, the petitioner could not be appointed on temporary basis from 01.4.2009 to 31.3.2010 vide memorandum dated 30.3.2009 (Ex. R1). The petitioner has denied that Ex. R1 was issued in her name and it bears her signatures.

23. It is the admitted case of the parties that the petitioner served the respondent/school up-to 25.9.2009 and her services were terminated with immediate effect per letter dated 26.9.2009, the copy of which is Ex. R2. The version of the respondent is that the services of the petitioner were terminated as a measure of punishment since she used to come late to the school as well as various complaints regarding her act and conduct were received from the school staff. Admittedly,

after the receipt of the complaints against the petitioner, neither she was charge-sheeted by the respondent/employer nor an inquiry was conducted against her. Therefore, the imposition of the penalty of dismissal from service on the petitioner by the respondent is patently wrong and illegal.

24. From the mandays charts Exts. RW1/O to V, it can be gathered that the petitioner had completed more than 240 days of work in a block of 12 calendar months preceding the date of her termination i.e. 26.09.2009 as envisaged under Section 25-B of the Act. The respondent (RW1) in his crossexamination admitted that before the disengagement of the services of the petitioner, neither any notice under Section 25-F of the Act was given to her nor the retrenchment compensation was paid. For these reasons, the termination of the services of the petitioner by the respondent is illegal and unjustified.

25. It is not the case of the petitioner that at the time of the retrenchment of her services, any person junior to her was retained in service by the respondent. It is also not her case that after the disengagement of her services, new/fresh hands have been appointed by the respondent and she was not afforded an opportunity of re-employment. The provisions of Sections 25-G and 25-H of the Act are thus not attracted in this case.

26. The date of issuance of the demand notice Ex. PW1/E has not come on the file. Of course, the copy of the letter dated 01.12.2009 (Ex. PW1/B) written by the respondent to the Labour Inspector, Dharamshala is there on the file. The said letter relates to the termination of the services of the petitioner. The termination in question took place on 26.9.2009. From the letter Ex. PW1/B, it can be gathered that the Labour Inspector had written a letter dated 10.11.2009 to the respondent during the conciliation proceedings. This indicates that the industrial dispute was raised by the petitioner at the earliest opportunity and within a period of less than two months from the date of the impugned termination.

27. In the demand notice (Ex. PW1/E), the petitioner nowhere mentioned that wages less than the prescribed minimum wages are/were being paid to her by the respondent/school. Therefore, she is not entitled to the wages as claimed. Moreover, the petitioner (PW1) admitted that the agreed wages were paid to her by the respondent for the period she served under him.

28. While testifying in the Court as PW1, the petitioner has given her age as 45 years. It is well known that a young lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. She is thus not entitled to the back wages. Of course, she is entitled to the reinstatement of her services besides the continuity in service etc.

29. This issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2, 3 AND 5

30. Not pressed

ISSUE NO.4

31. While deciding issue No.1, it has already been held by me that the respondent has contravened the provisions of Section 25-F of the Act. For the said reason, the termination of the services of the petitioner by the respondent is illegal and unjustified. She has the locus standi to sue.

32. This issue is also decided in favour of the petitioner and against her opponent.

RELIEF (ISSUE NO.6)

33. As a sequel to my findings on the issues No.1 and 4 above, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the respondent w.e.f. 26.09.2009 is set aside and quashed. The respondent is directed to reinstate the services of the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal retrenchment i.e. 26.09.2009 except back wages. Parties to bear their own costs.

34. It is clarified that the respondent will be at liberty to initiate disciplinary proceedings against the petitioner for the misconduct(s) attributed to her and take the action against her as per law.

35. The reference is answered in the aforesaid terms.

36. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

37. File after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of May, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUMINDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 53/2013

Date of Institution : 24.6.2013

Date of Decision : 12.05.2014

Shri Hem Kund s/o Shri Khoob Ram, r/o Village Anu, P.O. Behli, Sub Tehsil Nihri, District
Mandi, H.P. *..Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, Distt. Mandi, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, DDA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Hem Kund S/O Shri Khoob Ram, R/O Village Anu, P.O. Behli, Sub-Tehsil Nihri, District Mandi, H.P. during 2008 to 2010 and finally during July/August 2010 by The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged forest worker/labourer by the respondent on 01.5.1999. He continuously worked as such up-to 8th August, 2013 in Haraboi Beat of Kangoo Forest Range. On 9th August, 2013, his services were terminated by the respondent without assigning any reason and issuing any notice by a verbal order. During the period of his employment, the respondent gave him the artificial/fictional breaks time and again so that he does not complete 240 days of work. His seniority has been disturbed. He has also been deprived of the various service benefits by the respondent/employer. The persons junior to him (petitioner) were provided continuous work by the respondent. He has been discriminated. Names of 386 workers figure in the seniority list dated 31.3.2003 issued by the respondent. His (petitioner's) name is there at serial No.259 of the list. 128 persons junior to him are serving the respondent/department. The services of 23 workmen junior to him were regularized by the respondent in the month of September, 2012. His seniority has been ignored. The respondent failed to abide by the principle of ‘last come first go’ as well as indulged in unfair labour practice. During the break period, he remained without any work. Even after the final termination of his services on 09.8.2013, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the artificial breaks in service given to him by the respondent from the date of his initial engagement to 08.8.2013 as well as the final termination of his services ordered by the respondent on 09.8.2013 be upset. The break period be counted for the purpose of continuous service. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The reference and the claim petition regarding the retrenchment of the services of the petitioner *w.e.f.* July/August, 2010 are premature. They have also become in-fructuous as the petitioner is still working with him (respondent).

On merits, it has been denied that the services of the petitioner were engaged on 01.5.1999. Actually, the petitioner was appointed as a daily waged labourer in the month of April, 2000 for carrying out the seasonal forestry works. Neither any artificial/fictional break in service was provided to the petitioner nor his services were finally terminated as alleged. The petitioner was an intermittent worker. He used to report for duty as per his convenience. As and when the petitioner came present, his services were duly utilized for undertaking the seasonal forestry works subject to the availability of the works and the funds. The petitioner used to do the seasonal work of plantation, fencing and fire protection etc. It has been owned that the name of the petitioner finds

mention at serial No.259 of the seniority list. The services of those daily wagers have been regularized who completed eight years of continuous service with minimum of 240 days in a calendar year as per the policy of the State. The principle of 'last come first go' was strictly followed. He (respondent) did not indulge in unfair labour practice. No provision of the Act has been flouted. Since the petitioner is working with him, there is no question of his not being gainfully employed. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 14.11.2013, following issues were struck:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent during the years 2008 to 2010 is/was illegal and unjustified as alleged?

..OPP.

2. Whether the final termination of services of the petitioner by the respondent during the month of July/August, 2010 is illegal and unjustified as alleged?

..OPP.

3. Whether the claim petition is not maintainable in the present form?

..OPR.

4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect?

..OPR.

5. Whether the claim petition is premature and has become infructuous as alleged. If so, its effect?

..OPR.

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : No

Issue No.2 : Not pressed

Issue No.3 : Yes

Issue No.4 : No

Issue No.5 : Not pressed

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 AND 3

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. Shri Hem Kund (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that his services were initially engaged by the respondent in the month of April, 2000. He admitted that the work in the forest department is seasonal. He denied that he did not work for a single day in the years 2002, 2006 and 2007. He denied that neither any intentional break in service was provided to him by the respondent nor his services were terminated as alleged. He also denied that he has instituted a phoney petition to derive undue benefits.

10. Conversely, Shri Ajit Kumar Thakur, Divisional Forest Officer, Suket Forest Division, Sunder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that intentional breaks in service were provided to the petitioner time and again. He also denied that the services of the petitioner were finally terminated in an unlawful manner after August, 2010.

11. Ex. PW1/B is the copy of the seniority list of daily wagers of Suket Forest Division, Sunder Nagar as it stood on 31.3.2003. The name of the petitioner is there at serial No.259 of this list.

12. Ex. RW1/B is the mandays chart relating to the petitioner.

13. The petitioner has not placed/exhibited on the record any document evidencing that his services were initially engaged by the respondent on 1st May, 1999 as claimed. It is not the case of the petitioner that the mandays chart Ex. RW1/B produced by the respondent is incorrect. Its perusal discloses that the petitioner was appointed as a daily wager by the respondent in the month of April, 2000 and he is continuously working with the respondent/department even after July/August, 2010. Therefore, the question of the final termination of the services of the petitioner by the respondent (as per the reference) does not arise. Otherwise too, the Id. counsel/AR for the petitioner fairly conceded at bar that his client is still on the rolls of the respondent/department.

14. Now comes the question as to whether artificial breaks in service were provided to the petitioner by the respondent from the year 2008 to 2010? As already mentioned, the mandays chart Ex. RW1/B is not in dispute. Its perusal discloses that the petitioner did not work for a single day in the years 2002, 2006 and 2007. He worked for less than 100 days in the years 2000 and 2003 to 2005. The working pattern of the petitioner clarifies that he is/was an intermittent worker, who used to work as per his convenience. No explanation is forthcoming on behalf of the petitioner as to why he did not serve the respondent for a single day in the years 2002, 2006 and 2007 as well as worked for less than 100 days in the years 2000 and 2003 to 2005. Keeping in mind the working pattern of the petitioner, I feel that by no stretch of imagination, it can be said that artificial breaks in service were provided to him by the respondent as alleged.

15. Such being the situation, I have no hesitation to conclude that the claim petition is not maintainable in the present form. No fictional break in service was given to the petitioner by the respondent during the years 2008 to 2010.

16. These issues are decided against the petitioner and in favour of his adversary.

17. Not pressed.

ISSUE NO. 4

18. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

19. This issue is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.6)

20. As a sequel to my findings on the issues No. 1 and 3 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of May, 2014.

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-Industrial.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 54/2013

Date of Institution : 24.6.2013

Date of Decision : 12.05.2014

Shri Hem Raj s/o Shri Dhani Ram, r/o Village Jadiwan, P.O. Behli, Sub Tehsil Nihri, District Mandi, H.P. ..Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, Distt. Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, DDA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Hem Raj, S/O Shri Dhani Ram, R/O Village Jadiwan, P.O. Behli, Sub-Tehsil Nihri, District Mandi, H.P. during 2008 to 2009 and finally during July/August 2010 by The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged forest worker/labourer by the respondent on 1st October, 1999. He worked as such in Haraboi Beat of Kangoo Forest Range continuously up-to 08.8.2013. From the date of his initial engagement to 08.8.2013, the respondent provided him the artificial breaks in service time and again so that he does not complete 240 days of work in any calendar year of his engagement. The respondent indulged in unfair labour practice. Due to the intentional breaks in service provided by the respondent, his seniority has been disturbed. The persons junior to him were engaged without any break by the respondent. He has been discriminated. On 9th August, 2013, the respondent stopped issuing the muster roll in his name and finally terminated his services without issuing any notice or assigning any reason. In the seniority list dated 31.3.2003 issued by the respondent, the names of 386 daily wagers figure. His name is there at serial No.298 of the seniority list. 89 persons junior to him are serving the respondent/department. Out of them, the services of 23 workmen have been regularized by the respondent in the month of September, 2012. The respondent failed to abide by the principle of ‘last come first go’. His action also contravenes the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). During the break period, he (petitioner) remained unemployed. Even after the final termination of his services, he is not gainfully employed. The break period is required to be counted for the purpose of continuous service.

As such, he (petitioner) prays that the artificial breaks in service provided to him by the respondent time and again as well as final termination of his services ordered by the respondent on 09.8.2013 be upset. The break period be counted for the purpose of continuous service. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition/reference is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The reference regarding the retrenchment *w.e.f.* July/August, 2010 and the claim petition are premature. The same have also become in-fructuous since the petitioner is working with him (respondent). The services of the petitioner were never disengaged as alleged.

On merits, it has been denied that the services of the petitioner were engaged as a daily waged labourer on 01.10.1999. Actually, the petitioner was appointed for undertaking the seasonal forestry works as a daily waged labourer in the month of April, 2000. He was an intermittent worker. The petitioner used to report for duty as per his sweet will and convenience. As and when the petitioner reported for duty, his services were duly utilized subject to the availability of the work and the funds. No artificial/fictional breaks in service were given to the petitioner at any point of time. The petitioner is still on the rolls of the department for doing the seasonal works like plantation, fencing and fire protection etc. It stands admitted that the name of the petitioner figures at serial No.298 of the seniority list dated 31.3.2003. The services of only those daily wagers have been regularized, who completed eight years of continuous service with a minimum of 240 days of work in a calendar year as per the policy of the State. The principle of 'last come first go' was strictly followed. No provision of the Act has been flouted. Since the petitioner is working with him (respondent), there is no question of his not being gainfully employed. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 14.11.2013, following issues were struck:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent during the years 2008 and 2009 is/was illegal and unjustified as alleged? ..OPP.
2. Whether the final termination of services of the petitioner by the respondent during the month of July/August, 2010 is illegal and unjustified as alleged? ..OPP.
3. Whether the claim petition is not maintainable in the present form? ..OPR.
4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
5. Whether the claim petition is premature and has become infructuous as alleged. If so, its effect? ..OPR.
6. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : No

Issue No.2 : Not pressed

Issue No.3 : Yes

Issue No.4 : No

Issue No.5 : Not pressed

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Hem Raj (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record Ex. PW1/B, the seniority list of daily wagers of Suket Forest Division, Sunder Nagar as it stood on 31.3.2003.

In the cross-examination, he admitted that the work in the Forest Department is seasonal and his services used to be engaged by the respondent from time to time for carrying out the seasonal forestry works only. He denied that no intentional break in service was provided to him by the respondent. He also denied that his services were never disengaged by the respondent and to derive the undue benefits, he has instituted a phoney petition.

9. Conversely, Shri Ajit Kumar Thakur, Divisional Forest Officer, Suket Forest Division, Sunder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he stated that as and when the petitioner absented from duty, no notice was given to him asking him to resume his duties. Even no departmental proceedings were initiated against the petitioner. He denied that the services of the petitioner were terminated after August, 2010 unlawfully.

10. Ex. RW1/B is the mandays chart relating to the petitioner. The same is not in dispute.

11. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged labourer. The petitioner has not placed/exhibited on the file any document evidencing that his services were initially engaged on 01.10.1999 as claimed. As already mentioned, the mandays chart Ex. RW1/B is not in dispute. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of April, 2000 and he worked with the respondent/department intermittently up-to the year 2013. Since the petitioner worked with the respondent even after July/August, 2010, the question of the final termination of his services by the respondent (as per the reference) does not arise. Rather, the same has become insignificant.

12. Section 10(4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondent on 09.8.2013. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

13. Now comes the question as to whether artificial breaks in service were given to the petitioner by the respondent during the years 2008 and 2009 or not?

To my mind, the answer to this query is in the negative. The mandays chart EX. RW1/B clarifies that in the years 2002 and 2007, the petitioner did not serve the respondent for a single

day. In the years 2000, 2001 and 2003 to 2006, he worked for less than 100 days in each and every year. No explanation is forthcoming on behalf of the petitioner as to why he did not serve the respondent for a single day in the years 2002 and 2007 as well as served for less than 100 days in the years 2000, 2001 and 2003 to 2006. The petitioner (PW1) in his cross-examination admitted that the work in the forest department is seasonal and his services used to be engaged by the respondent from time to time for undertaking the seasonal forestry works only. The mandays chart Ex. RW1/B highlights that from the date of his initial engagement to the year 2013, the petitioner did not complete 240 days of work in any calendar year of his employment. The respondent has categorically pleaded and stated that the petitioner was an intermittent worker who used to work as per his convenience and sweet will. Taking into account the working pattern of the petitioner, by no stretch of imagination, it can be said that artificial breaks in service were provided to him (petitioner) by the respondent as alleged.

14. This issue is decided against the petitioner and in favour of the respondent.

ISSUE NO.2

15. Not pressed.

ISSUE NO.3

16. Taking into account my findings on issue No.1 above, it is held that the claim petition is not maintainable in the present form.

17. This issue is also decided against the petitioner and in favour of his opponent.

ISSUE NO.4

18. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

19. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 5

20. Not pressed.

21. As a sequel to my findings on the issues No. 1 and 3 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of May, 2014.

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 194/2013

Date of Institution : 15.11.2013

Date of Decision : 15.05.2014

Smt. Guddi Devi w/o Shri Chamaru Ram, r/o Village & P.O. Khaddar, Tehsil Joginder Nagar, District Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Guddi Devi W/O Shri Chamaru Ram, R/O Village & P.O. Khaddar, Tehsil Joginder Nagar, District Mandi, H.P. during February, 1999 to 2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily rated beldar on 13.01.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including her (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of her initial engagement up-to 31.8.2007, the respondent/department gave her the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in her (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to her (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to her (petitioner) w.e.f. 01.9.2007. After that, she was allowed to complete 240 days of work in each and every calendar year of her employment. The fictional breaks were given by the respondent arbitrarily. She has been discriminated. The work for which her services were engaged is of permanent nature and is still continuing. From 13.01.1999 to 31.8.2007, she requested the respondent time and again to stop giving her the fictional breaks, but in vain. During the break period, she remained without work and could not get the employment anywhere else despite the best efforts. She is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:--

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. Her services were engaged pursuant to the verbal requests made by her (petitioner) from time to time as per the requirement of the work and the availability of the funds.

On merits, paras 1 to 10 of the reply read thus:--

“1. That the contents of Para are admitted to the extent that the applicant has been engaged in the department during *w.e.f.* 01/1999 by the Executive Engineer, National Highway Division, H.P.P.W.D., Joginder Nagar as per detail of working days in Annexure-I. This division is functioning *w.e.f.* January, 2004. No illegal or intentional breaks have been given to applicant by this division.

2. That the content of this Para are wrong, incorrect hence denied. The applicant has been engaged in the department by the Executive Engineer, National Highway Division, H.P.P.W.D. Joginder Nagar up to December, 2003 and by this division *w.e.f.* January, 2004 as per the availability of works and funds. Moreover the applicant was willing to

- work, as such and has not raised any dispute prior to this notice. The year-wise working days of the work men whose name mentioned in the petition are attached in the Annexure-II.
3. That the contents of this Para are not admitted. This Division Regularized the daily wages workers who has completed 8 years or more continuous service with 240 days only the service if Sh. Dalip Singh S/o Sh. Mangat Ram, Sh. Goutam Ram S/o Sh. Rirku Ram, Smt. Geeta Devi W/o Sh. Sant Ram, Sh. Sanjay Kumar S/o Sh. Dharam Singh, Sh. Bhagmal S/o Sh. Doulat Ram and Sh. Chanchal S/o Sh. Tirth Ram have been regularized and remaining workers detailed in para 2 are still working as daily waged workers.
 4. That the contents of the Para are admitted to extent that applicant has been engaged on works *w.e.f.* 1/09/2007 continuous as per H.P. Govt Policy.
 5. That the contents of this Para are wrong, incorrect and hence denied. It has already been submitted in the para supra that this division is functioning *w.e.f.*, Jan 2004. More over the applicant was initially engaged with out following proper procedure and as per the decision on Hon'ble High court of H.P. in CWP No.2270/2008 filed by Sharmila Devi Shrama Versus Dr. Y.S. Parmar University and another on basis of ruling of Hon'ble Supreme Court cited in the judgment dated 14/05/2009 has been decided that those appointees to the Govt. Posts whether on daily wages basis, contract, adhoc or otherwise in whose case proper procedure has not been followed and where the vacancies have not been advertised or proper interview, procedure had not been held or where vacancies in the department did not exisit but the person have been employed with out following proper procedure, there is no liability on the Govt. to regularize such official.
 6. That the contents of this Para are not admitted. This division is functioning *w.e.f.* Jan 2004 and the applicant has never requested this division regarding fictional break as alleged in this para.
 7. That the contents of this para are denied.
 8. That the contents of this para are also not admitted. It is submitted that the applicant has been engaged as per works and funds available and no any legal/intentional breaks have been given to the applicant. Moreover the applicant has been initially engaged without following the proper procedure and keeping in view the decision of the Hon'ble High Court of H.P. in C.W.P. No.2270/2008 as stated in para 5 supra, the applicant is not entitled for seniority for the period she has not worked in this department.
 9. Para being of judicial nature. Hence no comments.
 10. Matter being legal in nature, hence no comments”.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed by the petitioner.
5. Per order dated 20.02.2014, following issues were struck:
 1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent from February, 1999 to 2007 is/was illegal and unjustified as alleged? ..OPP.

2. Whether the claim petition is not maintainable in the present form? ..OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Smt. Guddi Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that her services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. She denied that at the time of issuance of the muster rolls, it was conveyed to her and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. She denied that at the time of receiving the payment or issuance of the muster rolls, she did not raise any objection regarding providing the artificial breaks. She also denied that the instant industrial dispute has been raised by her at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions *i.e.* Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Lad Bharol and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to her. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and her juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geeta Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 1999 and she is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of January, 1999. The respondent (RW1) did not whisper a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Lad Bharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Lad Bharol, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of her initial engagement to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to her (whose names figure in the list Ex. RW1/D), were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of her initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

19. Not pressed.

ISSUE NO.3

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given her age as 52 years. It is well known that a lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.4)

23. As a sequel to my findings on the issues No.1 and 3, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. She (petitioner) shall be entitled to the seniority and continuity in service from the date of her initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of May, 2014.

(RAJAN GUPTA)
*Presiding Judge,
 Labour Court-cum-Industrial
 Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 162/2013

Date of Institution : 20.9.2013

Date of Decision : 15.05.2014

Shri Vijay Pal s/o Shri Ranjeet Singh, r/o Village Pehlun, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Vijay Pal, S/O Shri Ranjeet Singh, R/O Village Pehlun, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P. during 1999-2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis in the year 1999. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent up-to 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from the year 1999 to 30.09.2007. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of ‘last come first go’ was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner’s) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight

years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008. As per the policy framed/approved in Mool Raj Upadhaya's case, he is entitled to the regularization of his services as work-charge beldar *w.e.f.* 1st January, 2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:--

“(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 1999 to 30.09.2007 with cost and directed to respondent to pay the wages to the applicant for breaks periods and count the said period in continuity of service of the applicant for the purpose of his regularization.

(ii) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 8 years continuous service *w.e.f.* 01.01.2007 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant *w.e.f.* 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.

(iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.

(iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of January, 1999. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning *w.e.f.* 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had either completed 10 years of continuous

service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed by the petitioner.
5. Per order dated 29.11.2013, following issues were framed:
 1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent during the years 1999 to 2007 is/was illegal and unjustified as alleged? ..OPP.
 2. Whether the claim petition is not maintainable in the present form? ..OPR.
 3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
 4. Whether the petition is hit by the vice of delay and laches as alleged? ..OPR.
 5. Relief.
 6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
 7. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Vijay Pal (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of non-availability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/D were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed w.e.f. 06.1.1999 by the respondent.

15. The mandays chart Ex. RW1/C clarifies that from the month of January, 2000 to the year 2007, work for the entire month or 240 days was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

16. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of January, 2000 to the year 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.2

18. Not pressed.

ISSUE NO.3

19. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division,

Lad Bharol, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

20. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4.

21. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

22. In the petition, the petitioner has nowhere pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 36 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

23. This issue too is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.5)

24. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to the year 2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of January, 2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of May, 2014.

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUMINDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 188/2013

Date of Institution : 15.11.2013

Date of Decision : 15.05.2014

Shri Santosh Kumar s/o Shri Bachitter Singh, r/o Village Jallar, P.O. Karsal, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Santosh Kumar, S/O Shri Bachitter Singh, R/O Village Jallar, P.O. Karsal, Tehsil Joginder Nagar, District Mandi, H.P. during August 2000 to 2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 11.07.2000 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days

of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 11.7.2000 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get the employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:--

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. His services were engaged pursuant to the verbal requests made by him (petitioner) from time to time as per the requirement of the work and the availability of the funds.

On merits, paras 1 to 10 of the reply read thus:--

- “1. That the contents of Para are admitted to the extent that the applicant has been engaged in the department during *w.e.f.* 08/2000 by the Executive Engineer, National Highway Division, H.P.P.W.D., Joginder Nagar as per detail of working days in Annexure-I. This division is functioning *w.e.f.* January, 2004. No illegal or intentional breaks have been given to applicant by this division.
2. That the content of this Para are wrong, incorrect hence denied. The applicant has been engaged in the department by the Executive Engineer, National Highway Division, H.P.P.W.D. Joginder Nagar up to December, 2003 and by this division *w.e.f.* January, 2004 as per the availability of works and funds. Moreover the applicant was willing to work, as such and has not raised any dispute prior to this notice. The year-wise working days of the work men whose name mentioned in the petition are attached in the Annexure-II.
3. That the contents of this Para are not admitted. This Division Regularized the daily wages workers who has completed 8 years or more continuous service with 240 days only the service if Sh. Dalip Singh S/o Sh. Mangat Ram, Sh. Goutam Ram S/o Sh. Rirku Ram, Smt. Geeta Devi W/o Sh. Sant Ram, Sh. Sanjay Kumar S/o Sh. Dharam Singh, Sh. Bhagmal S/o Sh. Doulat Ram and Sh. Chanchal S/o Sh. Tirth Ram have

been regularized and remaining workers detailed in para 2 are still working as daily waged workers.

4. That the contents of the Para are admitted to extent that applicant has been engaged on works *w.e.f.* 1/09/2007 continuous as per H.P. Govt Policy.
5. That the contents of this Para are wrong, incorrect and hence denied. It has already been submitted in the para supra that this division is functioning *w.e.f.*, Jan 2004. More over the applicant was initially engaged with out following proper procedure and as per the decision of Hon'ble High court of H.P. in CWP No.2270/2008 filed by Sharmila Devi Shrama Versus Dr. Y.S. Parmar University and another on basis of ruling of Hon'ble Supreme Court cited in the judgment dated 14/05/2009 has been decided that those appointees to the Govt. Posts whether on daily wages basis, contract, adhoc or otherwise in whose case proper procedure has not been followed and where the vacancies have not been advertised or proper interview, procedure had not been held or where vacancies in the department did not exist but the person have been employed with out following proper procedure, there is no liability on the Govt. to regularize such official.
6. That the contents of this Para are not admitted. This division is functioning *w.e.f.* Jan 2004 and the applicant has never requested this division regarding fictional break as alleged in this para.
7. That the contents of this para are denied.
8. That the contents of this para are also not admitted. It is submitted that the applicant has been engaged as per works and funds available and no any legal/intentional breaks have been given to the applicant. Moreover the applicant has been initially engaged without following the proper procedure and keeping in view the decision of the Hon'ble High Court of H.P. in C.W.P. No.2270/2008 as stated in para 5 supra, the applicant is not entitled for seniority for the period she has not worked in this department.
9. Para being of judicial nature. Hence no comments.
10. Matter being legal in nature, hence no comments". In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.
4. No rejoinder has been filed by the petitioner.
5. Per order dated 20.02.2014, following issues were struck:
 1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent from August, 2000 to 2007 is/was illegal and unjustified as alleged? ..OPP.
 2. Whether the claim petition is not maintainable in the present form? ..OPR.
 3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
 4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : No
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Santosh Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions *i.e.* Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Lad Bharol and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geeta Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of August, 2000. The respondent (RW1) did not whisper a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Lad Bharol, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D), were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date/month of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

19. Not pressed.

ISSUE NO. 3

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was

allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given his age as 38 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.4)

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month/date of his initial engagement i.e. August, 2000, except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of May, 2014.

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
 CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 203/2013

Date of Institution : 15.11.2013

Date of Decision : 15.05.2014

Shri Krishan Singh s/o Shri Diwan Chand, r/o Village Bada Thana, P.O. Panjalag, Tehsil Joginder Nagar, Distt. Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Krishan Singh, S/O Diwan Chand, R/O Village Bada Thana, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. during 1999 to 2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 01.10.1998 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 01.10.1998 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get the employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:--

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon’ble Court deems

the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. His services were engaged pursuant to the verbal requests made by him (petitioner) from time to time as per the requirement of the work and the availability of the funds.

On merits, paras 1 to 10 of the reply read thus:--

- “1. That the contents of Para are admitted to the extent that the applicant has been engaged in the department during *w.e.f.* 10/1998 by the Executive Engineer, National Highway Division, H.P.P.W.D., Joginder Nagar as per detail of working days in Annexure-I. This division is functioning *w.e.f.* January, 2004. No illegal or intentional breaks have been given to applicant by this division.
2. That the content of this Para are wrong, incorrect hence denied. The applicant has been engaged in the department by the Executive Engineer, National Highway Division, H.P.P.W.D. Joginder Nagar up to December, 2003 and by this division *w.e.f.* January, 2004 as per the availability of works and funds. Moreover the applicant was willing to work, as such and has not raised any dispute prior to this notice. The year-wise working days of the work men whose name mentioned in the petition are attached in the Annexure-II.
3. That the contents of this Para are not admitted. This Division Regularized the daily wages workers who has completed 8 years or more continuous service with 240 days only the service if Sh. Dalip Singh S/o Sh. Mangat Ram, Sh. Goutam Ram S/o Sh. Rirku Ram, Smt. Geeta Devi W/o Sh. Sant Ram, Sh. Sanjay Kumar S/o Sh. Dharam Singh, Sh. Bhagmal S/o Sh. Doulat Ram and Sh. Chanchal S/o Sh. Tirth Ram have been regularized and remaining workers detailed in para 2 are still working as daily waged workers.
4. That the contents of the Para are admitted to extent that applicant has been engaged on works *w.e.f.* 1/09/2007 continuous as per H.P. Govt Policy.
5. That the contents of this Para are wrong, incorrect and hence denied. It has already been submitted in the para supra that this division is functioning *w.e.f.*, Jan 2004. More over the applicant was initially engaged with out following proper procedure and as per the decision of Hon’ble High court of H.P. in CWP No.2270/2008 filed by Sharmila Devi Shrama Versus Dr. Y.S. Parmar University and another on basis of ruling of Hon’ble Supreme Court cited in the judgment dated 14/05/2009 has been decided that those appointees to the Govt. Posts whether on daily wages basis, contract, adhoc or otherwise in whose case proper procedure has not been followed and where the vacancies have not been advertised or proper interview, procedure had not been held or where vacancies in the department did not exisit but the person have been employed with out following proper procedure, there is no liability on the Govt. to regularize such official.
6. That the contents of this Para are not admitted. This division is functioning *w.e.f.* Jan 2004 and the applicant has never requested this division regarding fictional break as alleged in this para.

7. That the contents of this para are denied.
8. That the contents of this para are also not admitted. It is submitted that the applicant has been engaged as per works and funds available and no any legal/intentional breaks have been given to the applicant. Moreover the applicant has been initially engaged without following the proper procedure and keeping in view the decision of the Hon'ble High Court of H.P. in C.W.P. No.2270/2008 as stated in para 5 supra, the applicant is not entitled for seniority for the period she has not worked in this department.
9. Para being of judicial nature. Hence no comments.
10. Matter being legal in nature, hence no comments".

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. No rejoinder has been filed by the petitioner.
5. Per order dated 20.02.2014, following issues were struck:
 1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent from the year 1999 to 2007 is/was illegal and unjustified as alleged? ..OPP.
 2. Whether the claim petition is not maintainable in the present form? ..OPR.
 3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
 4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Krishan Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was

conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions *i.e.* Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Lad Bharol and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geeta Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of September, 1998. The respondent (RW1) did not whisper a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions *i.e.* Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Lad Bharol, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the month of January, 1999 to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The

muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D), were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of January, 1999 to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

19. Not pressed.

ISSUE NO. 3

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No. 4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given his age as 53 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.4)

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of January, 1999, except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of May, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 204/2013

Date of Institution : 15.11.2013

Date of Decision : 15.05.2014

Shri Hoshiyar Singh s/o Shri Hachu Ram, r/o Village Kashiri, P.O. Balh Kwar, Tehsil
Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Hoshiyar Singh, S/O Shri Hachu Ram, R/O Village Kashiri, P.O. Balh Kwar, Tehsil Joginder Nagar, District Mandi, H.P. during 1999 to 2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 25.09.1998 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) *w.e.f.* 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 25.09.1998 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get the employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:--

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon’ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. His services were engaged pursuant to the verbal requests made by him (petitioner) from time to time as per the requirement of the work and the availability of the funds.

On merits, paras 1 to 10 of the reply read thus:--

“1. That the contents of Para are admitted to the extent that the applicant has been engaged in the department during *w.e.f.* 10/1998 by the Executive Engineer, National Highway

- Division, H.P.P.W.D., Joginder Nagar as per detail of working days in Annexure-I. This division is functioning w.e.f. January, 2004. No illegal or intentional breaks have been given to applicant by this division.
2. That the content of this Para are wrong, incorrect hence denied. The applicant has been engaged in the department by the Executive Engineer, National Highway Division, H.P.P.W.D. Joginder Nagar up to December, 2003 and by this division w.e.f. January, 2004 as per the availability of works and funds. Moreover the applicant was willing to work, as such and has not raised any dispute prior to this notice. The year-wise working days of the work men whose name mentioned in the petition are attached in the Annexure-II.
 3. That the contents of this Para are not admitted. This Division Regularized the daily wages workers who has completed 8 years or more continuous service with 240 days only the service if Sh. Dalip Singh S/o Sh. Mangat Ram, Sh. Goutam Ram S/o Sh. Rirku Ram, Smt. Geeta Devi W/o Sh. Sant Ram, Sh. Sanjay Kumar S/o Sh. Dharam Singh, Sh. Bhagmal S/o Sh. Doulat Ram and Sh. Chanchal S/o Sh. Tirth Ram have been regularized and remaining workers detailed in para 2 are still working as daily waged workers.
 4. That the contents of the Para are admitted to extent that applicant has been engaged on works w.e.f. 1/09/2007 continuous as per H.P. Govt Policy.
 5. That the contents of this Para are wrong, incorrect and hence denied. It has already been submitted in the para supra that this division is functioning w.e.f., Jan 2004. More over the applicant was initially engaged with out following proper procedure and as per the decision on Hon'ble High court of H.P. in CWP No.2270/2008 filed by Sharmila Devi Shrama Versus Dr. Y.S. Parmar University and another on basis of ruling of Hon'ble Supreme Court cited in the judgment dated 14/05/2009 has been decided that those appointees to the Govt. Posts whether on daily wages basis, contract, adhoc or otherwise in whose case proper procedure has not been followed and where the vacancies have not been advertised or proper interview, procedure had not been held or where vacancies in the department did not exist but the person have been employed with out following proper procedure, there is no liability on the Govt. to regularize such official.
 6. That the contents of this Para are not admitted. This division is functioning w.e.f. Jan 2004 and the applicant has never requested this division regarding fictional break as alleged in this para.
 7. That the contents of this para are denied.
 8. That the contents of this para are also not admitted. It is submitted that the applicant has been engaged as per works and funds available and no any legal/intentional breaks have been given to the applicant. Moreover the applicant has been initially engaged without following the proper procedure and keeping in view the decision of the Hon'ble High Court of H.P. in C.W.P. No.2270/2008 as stated in para 5 supra, the applicant is not entitled for seniority for the period she has not worked in this department.
 9. Para being of judicial nature. Hence no comments.
 10. Matter being legal in nature, hence no comments".

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. No rejoinder has been filed by the petitioner.
5. Per order dated 20.02.2014, following issues were struck:
 1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent from the year 1999 to 2007 is/was illegal and unjustified as alleged? ..OPP.
 2. Whether the claim petition is not maintainable in the present form? ..OPR.
 3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
 4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1.

8. Shri Hoshiyar Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions *i.e.* Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway

Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Lad Bharol and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional *w.e.f.* 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geeta Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of October, 1998. The respondent (RW1) did not whisper a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions *i.e.* Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Lad Bharol, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the month of January, 1999 to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D), were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of January, 1999 to 31st August, 2007 as per the provisions contained in Section 25-B of the

Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

19. Not pressed.

ISSUE NO. 3

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given his age as 44 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 4)

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of January, 1999, except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of May, 2013.

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
 CUMINDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 134/2013

Date of Institution : 29.08.2013

Date of Decision : 15.05.2014

Shri Ghanshyam Singh s/o Shri Lachhman Dass, r/o Village Majhwar, P.O. Jalpehar, Tehsil
 Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

Versus

The Sr. Executive Engineer, Electrical Division HPSEB Ltd. Joginder Nagar, Distt. Mandi,
 H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Pradeep Dogra, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Ghanshyam Singh S/O Sh. Lachhman Dass, Village-Majhwar, P.O. Jalpehar, Tehsil Joginder Nagar, Distt. Mandi, H.P. by The Sr. Executive Engineer, Electrical Division HPSEB Ltd. Joginder Nagar, Distt. Mandi *w.e.f.* 01.7.2001 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from above employer?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) reads thus:--

“1. That it is submitted here that the services of applicant have been initially engaged by the respondent on daily waged basis on muster roll *w.e.f.* 11.10.1999 vide muster roll no. 223 and he had interrupted worked up to 01.07.2001 under the Assistant Engineer, HPSEB, Sub Division Joginder Nagar and during the above said period his service have been engaged and disengaged by the respondent as given him fictional breaks

from time to time to not letting to complete 240 days in continuous service under section 25-B of the Industrial Disputes Act, 1947, whereas at the time of his initial appointment he has not given any appointed order by the respondent.

2. That it is submitted that when all of sudden the services of applicant have been unlawfully terminated by the respondent *w.e.f.* 01.07.2001 vide verbal order and the applicant immediately filed the O.A. No.1811/2001 before the Hon'ble Administrative Tribunal against his alleged termination from services and Hon'ble Administrative Tribunal vide interim orders dated 14.12.2001 directed the respondent to re-engage the applicant.
3. That it is submitted that the orders of the Hon'ble Tribunal has been assailed by the respondent before the Hon'ble High Court of Himachal Pradesh vide CWP No. 986/2002 and the Hon'ble High Court decided the same vide its judgment dated 13.04.2007 whereby the order of the Tribunal was set aside for want of jurisdiction with the liberty to the applicant to approach the appropriate forum. Thereafter the applicant had filed the demand notice dated 26.03.2008 under Section 2-A of the Industrial Disputes Act, 1947 against his illegal termination *w.e.f.* 01.07.2001. During the conciliation proceeding the respondent submitted the parawise written reply to the demand notice along with mandays chart before the Conciliation Officer and taken the stand that the applicant had worked under their control up to 31.03.2000 and after conciliation failed the appropriate government has referred the dispute to the Hon'ble this Court for adjudication *vide* notification dated 13.07.2010 and relying upon the record of the respondent mentioned the date of termination of the applicant as 01.04.2000 instead of 01.07.2001.
4. That it is submitted that the said dispute was registered by the Hon'ble Court as Reference no.213/2010 and during the proceeding before the Hon'ble Court the respondent filed the written reply along with mandays chart and the respondent took a contrary stand that the applicant had worked up to 01.07.2001 whereas in the conciliation proceeding the respondent took the stand that the applicant had worked only up to 31.03.2000, so the case of the applicant stood beyond the term of reference and therefore, accepting the request of the Id A.R. and counsel of the applicant the Hon'ble Court vide order dated 19.04.2012 dismissed the reference as withdrawn with the right to the applicant to raise the fresh industrial dispute.
5. That it is submitted here that the applicant immediately raised his industrial dispute under Section 2-A of the Industrial Disputes Act, 1947 vide demand notice dated 20.04.2012 and copy of the same was forwarded to the Ld Conciliation Officer Joginder Nagar. The Labour Inspector-cum-Conciliation Officer tried to settle the dispute amicably, but the same could not be settle during the course of conciliation proceeding, thereafter the conciliation officer sent the failure report to the appropriate government for making the reference under Section 12 (4) of the Industrial Disputes Act, 1947 and the appropriate government again referred the dispute to the Hon'ble this Court vide notification dated 16.08.2013 for adjudication.
6. That it is submitted here that the services of applicant had been unlawfully terminated by the respondent *w.e.f.* 01.07.2001 and before terminating his services he has not served any show cause notice, charge-sheet neither the enquiry had been conducted against him nor the retrenchment compensation has been paid to him and without complying the same every termination is null, void and abinitio and the respondent has also violated the principle of natural justice.

7. That it is submitted here that while terminating the services of applicant the respondent has not followed the principle of Last Come First Go whereas persons junior to applicant have been retained continuously without any breaks namely Sh Tara Chand S/o Sh Daya Ram, Lekh Ram S/o Sh Chamaru Ram and the same has been violated under Section 25-G of the Industrial Disputes Act, 1947, even that after termination the services of applicant new fresh hand have been appointed by the respondent namely Sher Singh (21.09.2001), Dina Nath (21.11.2001), Sanjay Kumar S/o Sh Amar Singh (21.02.2002) and Bhag Singh S/o Sh Ranchu Ram (09.04.2003) but the applicant has not given any opportunity for reemployment and the same has been violated under Section 25-H of the Industrial Disputes Act, 1947.
8. That it is submitted here that one Sh Piar Chand S/o Sh Sohan Singh R/o Village Banon, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. whose services have been engaged by the respondent on muster roll *w.e.f.* 25.02.1999 and he has been worked only 43 days with the respondent and thereafter his services have been terminated by the respondent and the said workman has been raised the industrial dispute against the department and his unlawful termination has been set aside by the Hon'ble this Court in the violation of Section 25-G and 25-H of the Industrial Disputes Act, 1947 and also grant him 50% back wages including seniority and continuity of service. Thereafter the respondent/department has been assailed the award before the Hon'ble High Court but the same has been upheld by the Hon'ble High Court and thereafter the services of said workman have been reengaged by the respondent *w.e.f.* 02.02.2007 and also pay him Rs.75000/- approximately as back wages and now the said workman has been granted the work-charge status in regular pay scale in the year 2010.
9. That it is submitted here that due to the contrary stand taken by the respondent before the Conciliation Officer and before the Hon'ble this Court, the earlier reference no. 213/2010 has been withdrawn by the applicant due to the negligence of the respondent, so the act of the respondent is unfair labour practice and the respondent harassed the applicant since his illegal termination to till today. It is again submitted here that the applicant is belonging to a poor family and have no source of income to maintain his family and also not in a position to give the good education to his children. It is further submitted here that the persons who were working along with applicant have been regularized by the respondent *w.e.f.* February, 2007 but the applicant is still fighting for his grievance due to the false/wrong reply filed by the respondent before the Conciliation Officer, hence the applicant is entitled full back wages from the date of illegal termination, whereas the applicant had raised his dispute before the Hon'ble Administrative Tribunal immediately after his illegal termination and whereas the applicant has spent approximately Rs. 1,00,000/- in the proceedings before the Hon'ble Administrative Tribunal, High Court, Conciliation Officer, Hon'ble this Court, again before the Conciliation Officer which he has spent borrowing loan from his near & dears & relatives after great difficulty, so the Hon'ble Court may kindly be determine the facts of illegal termination and also determine the facts under which the applicant has withdrawn his earlier reference no. 213/2010 and grant the full back wages in favour of the petitioner.
10. That the Act of respondent to terminated the services of applicant *w.e.f.* 01.07.2001 is highly unjustified, illegal, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 and the same may kindly be set aside on the above ground. It is submitted here that the applicant is still unemployed and not

gainfully employed anywhere from the date of his alleged termination dated 01.07.2001 and he is entitled for full back wages.

Relief :

It is therefore prayed in view of the aforesaid submissions made here in above the Hon'ble Court may kindly be granted the following relief in the favour of applicant.

- (i) The Hon'ble Court kindly be set aside the illegal termination order w.e.f. 01.07.2001 and directed to respondent to reinstate the services of applicant with full back wages, seniority and in continuity of service with all consequential service benefits.
- (ii) The Hon'ble Court again directed to respondent to grant the work charge status to the applicant after completion of 10 years continuous service w.e.f. 01.07.2011 in the pay scale of Rs 4900-10680/-.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior and the litigation cost of the petition Rs.1,00,000/- may also be awarded in the favour of applicant.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable. The same is wholly misconceived and groundless. The claim petition is baseless. The same is flagrant abuse of the process of law. The petition has been instituted to harass and blackmail him (respondent) as well as derive the undue advantages. The petitioner has no cause of action and locus standi to sue. He is estopped from filing the claim petition by his act, conduct and acquiescence. The petition is frivolous and vexatious. The claimant/petitioner has concealed the true and material facts from the Court. He has not approached the Court with clean hands. The petition is hopelessly time barred.

On merits, paras 1 to 7 of the reply are reproduced below verbatim for ready reference:--

“(1) That the contents of Para 1 of the petition are legal and matter of record and hence the petitioner be put to strict proof of the same in accordance with the provisions of law. However it is submitted that the applicant was initially engaged as casual beldar in different subdivisions w.e.f. 11-10-1999 and remained engaged upto 20-04-2001. The mandays chart of the applicant is placed on record which shows that the applicant the efficiency and have never worked continuously for 240 days with the respdt. The applicant initially engaged on 11-10-99 to 20-10-99 to carry out the urgent nature of work and on completion the service of the applicant were dispensed w.e.f. 21-11-1999. Again on availability of work and funds the applicant was again re-engaged on his own request on 1-3-2000 and he worked as such up to 20-7-2000 in sub-division Chauntra. The applicant was again reengaged w.e.f. 21-1-2001 in sub-division Lad-bharol, again on 21-4-2001 to 1-7-2001 in sub-division Chauntra to carry out the urgent work of casual work and on completion of the said work his engagement automatically came to an end when no alternative/urgent work was available with the respdt. It is wrong and incorrect that the respdt has given any fictional breaks to the applicant.

- (2) That the contents of Para 2 of the application are wrong, false, incorrect that the respdt has unlawfully terminated the services of the applicant *w.e.f.* 1-7-2001. Rests of the contents are not disputed and hence need no reply. It is submitted that the applicant worked up to 1-7-2001 and thereafter left the job of his own sweet will, without any reason and without any intimation.
- (3) That the contents of Para's 3 to 5 of the application are matter of record, hence not disputed and need no reply, but the applicant be put to strict proof of the same in accordance with the provisions of the Act and law.
- (4) That the contents of Para's 6 & 7 of the petition are wrong, false, incorrect and hence denied. It is submitted that the applicant was engaged as casual beldar for urgent nature of work and funds and availability. The applicant has worked with the respdt for less than 240 days hence the applicant has not been served with the notice and moreover he was hired laborer and was paid according to his work. Hence no question of termination of applicant arises in any manner. The casual services/duties rendered by the applicant do not necessarily mean his absorption as regular beldar or his continuity in the service. No junior casual worker to the applicant never been promoted or engaged by the respdt till date. The alleged persons in this Para are only skilled and technically know-how literate persons and only because of this they have been. It is worth mentioning here that the applicant, being a casual beldar is not covered under the Act and hence there is no violation of section 25-H and 25-G.
- (5) That the contents of Para 8 of the application/petition are false, incorrect, baseless, without any regime & reason and hence denied in Toto. It is submitted that the facts of the case of Sh Piar Singh as alleged were different and are not applicable to the case of present applicant.
- (6) That the contents of Para 9 of the application are altogether false, incorrect, baseless, without any regime & reason and hence denied in Toto. It is submitted that res-judicata must apply to maintain the decorum of the Hon'ble Tribunal as the applicant has not taken permission from the hon'ble tribunal to file a fresh petition on the same cause of action at the time of withdrawing the earlier reference no 213/2010. Hence the petition deserves dismissal on this score alone to maintain the dignity of the Hon'ble Tribunal.
- (7) That the contents of Para 10 of the petition are totally wrong, false, incorrect and hence the applicant is not entitled for any relief as prayed for in RELIEF's HEAD *i.e.* in sub-para's (i) to (iv)".

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed with special costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 28.11.2013, following issues were struck.

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 01-07-2001 is illegal and unjustified as alleged? ..OPP.
2. Whether the petitioner has a cause of action? ..OPP.
3. Whether the petitioner has locus standi to sue? ..OPP.

4. Whether the claim petition is not maintainable in the present form? ..OPR.
 5. Whether the petitioner has concealed the true and material facts from the Court as alleged. If so, its effect? ..OPR.
 6. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ..OPR.
 7. Whether the petition is hit by the vice of delay and laches as alleged? ..OPR.
 8. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Yes

Issue No.4 : Not pressed

Issue No.5 : Not pressed

Issue No.6 : Not pressed

Issue No.7 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Ghanshyam Singh (pt.) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he did not complete 240 days of work in any calendar year of his employment. He denied that his services used to be engaged by the respondent from time to time for undertaking the urgent/necessary works. He admitted that no intentional break in service was provided to him by the respondent. He denied that his services were never terminated by the respondent and he left the job voluntarily. He does not know that Shri Pyar Singh worked continuously. He denied that his services used to be engaged for specific work only to his knowledge. He also denied that at the time of the engagement of his services, the respondent used to tell him that his employment will automatically come to an end on the completion of the work. He denied that no person junior to him is serving the respondent/Board. He refuted that after 01.7.2001, no new/fresh hands have been engaged by the respondent. He even denied that to gain the employment and other undue benefits, he has instituted a phoney petition.

9. Conversely, Shri Atul Kumar Mehta, Sr. Executive Engineer, HPSEB Division Joginder Nagar, Distt. Mandi, H.P. (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. Ex. RW1/A is the affidavit submitted in terms of O18 R4 CPC.

In the cross-examination, he admitted that the services of the petitioner were initially engaged *w.e.f.* 11.10.1999 vide muster roll No.223. No appointment order/letter was issued in the name of the petitioner. He admitted that the petitioner worked up-to 01.7.2001. He denied that on

the said date the services of the petitioner were terminated by a verbal order. Self stated, since the work was over, the services of the petitioner came to an end automatically. He admitted that the work continued even after 01.7.2001 *i.e.* the date of the retrenchment in question. He admitted that the persons junior to the petitioner are working under him. Volunteered, they have been re-engaged as per the orders of the Court. S/Shri Sher Singh and Dina Nath were re-employed as per the orders of the Court. At the time of their re-engagement, an opportunity of reemployment was not afforded to the petitioner.

10. Ex. PW1/B is the copy of the demand notice dated 26.3.2008 served upon the respondent by the petitioner.

11. Ex. PW1/C is the copy of the reply dated 27.3.2009 submitted by the respondent before the Labour Officer-cum-Conciliation Officer, Mandi Zone Mandi during the conciliation proceedings.

12. Ex. PW1/D is the copy of the mandays, which was submitted by the respondent, before the Labour Officer at the time of conciliation.

13. Ex. PW1/E is the copy of the notification/reference, which was previously issued by the appropriate Govt. on 13th July, 2010.

14. Ex. PW1/F is the copy of the reply filed by the respondent before this Court in the earlier reference No.213/2010 titled as Sh. Ghanshyam Singh versus Sr. Executive Engineer, HPSEBL, Electrical Division, Joginder Nagar.

15. Ex. PW1/G is the copy of the mandays chart pertaining to the petitioner which was annexed to the reply Ex. PW1/F by the respondent.

16. Ex. PW1/H is the copy of the order dated 19.4.2012 passed by this Court/Tribunal in the earlier reference No.213/2010.

17. Ex. PW1/I is the copy of the demand notice dated 20.4.2012 served upon the respondent by the petitioner.

18. Ex. PW1/J is the copy of the reply dated 15.9.2012 submitted by the respondent before the Labour Inspector-cum-Conciliation Officer, Joginder Nagar during the conciliation proceedings after the receipt of the demand notice dated 20.4.2012 (Ex. PW1/I).

19. Section 10(4) of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding providing the artificial/fictional breaks in service to the petitioner by the respondent during the course of the employment. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference. Otherwise too, during his cross-examination, the petitioner (PW1) admitted that no fictional break in service was given to him by the respondent during the period of the engagement.

20. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on 11.10.1999 and he worked intermittently as such up-to 01.7.2001. The respondent has not placed/exhibited on the file any document evidencing that the services of the petitioner used to be engaged for a specific period and work to his knowledge.

21. The version of the petitioner is that on 01.7.2001, his services were unlawfully terminated by the respondent by a verbal order. While denying the said fact, the respondent has pleaded that the petitioner left the job of his own accord and free volition.

It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume his duties after he allegedly left/abandoned the same. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

22. As already mentioned, the respondent has not placed/exhibited on the record any document evidencing that the services of the petitioner were engaged for a particular work and period of his knowledge. Therefore, it does not lie in the mouth of the respondent to say that the services of the petitioner came to an end automatically on 1st July, 2001 on the completion of the work.

23. The petitioner (PW1) in his cross-examination admitted that he did not complete 240 days of work in any calendar year of his employment. The said fact finds support from the mandays chart Ex. PW1/G, which is not in dispute. That being so, the provisions of Section 25-F of the Act are not attracted in this case.

24. The respondent (RW1) during the cross-examination admitted that the persons junior to the petitioner are working under him. Of course, he (RW1) hastened to add voluntarily that the juniors have been re-engaged as per the orders passed by the Court. Seniority list of the regular T-mates as it stood on 01.1.2002 in respect of Electrical Division, HPSEB, Joginder Nagar is there on the record. Its perusal discloses that Shri Manohar Lal (serial No.37) and Shri Amar Singh (serial No.48) were appointed by the respondent on 19.9.2000 and 01.9.2000, respectively. They are junior to the petitioner, whose services were engaged on 11.10.1999. Both these persons are admittedly working with the respondent/Board. This indicates that the respondent failed to abide by the principle of 'last come first go'. His action thus contravenes the provisions of Section 25-G of the Act.

25. Not only this, the particulars of daily waged beldars as it stood on 30.9.2007 in respect of the Electrical Division, HPSEB, Joginder Nagar are there on the file. They reveal that Shri Sanjay Kumar (serial No.74) and Shri Bhag Singh (serial No.76) were appointed by the respondent on 21.2.2002 and 09.4.2003, respectively. The services of these two persons were engaged after the disengagement of the services of the petitioner on 01.7.2001. There is nothing on the file to show that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner by the respondent. Thus, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date of his termination.

26. Such being the situation, I have no hesitation to conclude that the retrenchment of the services of the petitioner by the respondent *w.e.f.* 01.7.2001 is illegal and unjustified.

27. This issue is decided in favour of the petitioner and against the respondent.

28. Keeping in mind my findings on issue No.1 above, it is held that the petitioner has a cause of action. He also has the locus standi to sue.

29. These issues are also decided in favour of the petitioner and against the respondent.

ISSUES NO. 4, 5 AND 6

30. Not pressed.

ISSUE NO.7

31. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No. 4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

32. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon’ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:--

“19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

33. In Mohan Lal's case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon'ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.

34. Now comes the all important question as to what relief should be granted/awarded to the petitioner?

The impugned termination took place on 01.7.2001. The same is held to be bad in the eyes of law as it contravenes the provisions of Sections 25-G and 25-H of the Act.

35. The termination in question was immediately challenged by the petitioner by instituting Original Application No.1811/2001 before the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal. Thereafter, the matter went to the Hon'ble High Court of Himachal Pradesh as well as proceeded before this Court as reference No.213/2010. The previous reference No.213/2010 was disposed of by this Court/Tribunal per order dated 19.4.2012, the copy of which is Ex. PW1/H.

36. After the decision of the earlier reference, a fresh demand notice dated 20.4.2012 (Ex. PW1/I) was served upon the respondent by the petitioner. On the basis of the said demand notice, conciliation proceedings were initiated by the Labour Inspector-cum-Conciliation Officer, Joginder Nagar. Pursuant to the report under Section 12(4) of the Act submitted by him, the reference in hand was issued by the appropriate Government (Labour Commissioner, H.P.).

37. From the evidence available on the record, it can be gathered that the industrial dispute was raised by the petitioner without any delay. He cannot be made to suffer due to the period spent in the proceedings before the various Courts/Forums or the filing of the wrong mandays chart (Ex. PW1/D) by the respondent. As mentioned earlier, it is the admitted case of the respondent that the persons junior to the petitioner are serving under him and their services have been re-engaged as per the orders passed by the Court. In order to maintain parity amongst the workmen, the petitioner is also entitled to the reinstatement of his services.

38. While testifying in the Court as PW1, the petitioner has given his age as 45 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the job. Moreover, during his cross-examination, the petitioner (PW1) admitted that he earns his livelihood by doing the work of agriculture. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

39. This issue too is decided in favour of the petitioner and against his opponent.

RELIEF (ISSUE NO.8)

40. As a sequel to my findings on the various issues above, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the respondent *w.e.f.* 01.7.2001 is set aside and quashed. The respondent is directed to reinstate the services of the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 01.7.2001 except back wages. Parties to bear their own costs.

41. The reference is answered in the aforesaid terms.

42. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

43. File after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of May, 2014.

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 143/2014

Sh. Baldev Kumar s/o Shri Jagdish Chand, r/o Village and P.O. Hangloh, Tehsil Palampur,
District Kangra, H.P. *..Petitioner.*

Versus

The Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav
Vidyalya (CSKHPKV), Palampur, District Kangra, H.P. *..Respondent.*

20-05-2014 Present : Sh. N.L. Kaundal, A.R. for the petitioner.
Sh. R.C. Puri, Adv. has filed the power of attorney favouring
Sh. Rahul Gupta, Adv. on behalf of the respondent.

Ld. Authorised Representative for the petitioner/claimant has made the below given
statement in the Court today:--

“As per the instructions received by me from my client (Sh. Baldev Kumar) I do not want to
proceed with this reference. It be dismissed as withdrawn.

RO & AC
Sd/-

P.J.”
20-05-2014

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further
necessary action at its end.
5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 146/2014

Sh. Pawan Kumar s/o Shri Shakti Chand, r/o Village and P.O. Batahan, Tehsil Palampur,
District Kangra, H.P. ..Petitioner.

Versus

The Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav
Vidyalya (CSKHPKV), Palampur, District Kangra, H.P. ..Respondent.

20-05-2014 Present: None for the petitioner.

Sh. R.C. Puri, Adv. has filed the power of attorney favouring
Sh. Rahul Gupta, Adv. on behalf of the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the claimant/petitioner. He is absent despite service/ knowledge. It is already 2.30 p.m. This indicates that the claimant/petitioner is not interested to pursue the matter. Since the petitioner/workman has failed to come present and file any statement of claim/demand, it cannot be said that the termination of the services of the petitioner by the respondent *w.e.f.* March / April, 2010 is illegal and unjustified. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

4. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 153/2014

Sh. Birbal s/o Shri Man Chand, r/o Village and P.O. Chimbelhaar, Tehsil Palampur, District
Kangra, H.P. ..Petitioner.

Versus

The Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav
Vidyalya (CSKHPKV), Palampur, District Kangra, H.P. ..Respondent.

20-05-2014 Present : None for the petitioner.

Sh. R.C. Puri, Adv. has filed the power of attorney favouring
Sh. Rahul Gupta, Adv. on behalf of the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the claimant/petitioner. He is absent despite service/ knowledge. It is already 2.30 p.m. This indicates that the claimant/petitioner is not interested to pursue the matter. Since the petitioner/workman has failed to come present and file any statement of claim/demand, it cannot be said that the termination of the services of the petitioner by the respondent *w.e.f.* March / April, 2010 is illegal and unjustified. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

4. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P

गृह विभाग (सी अनुभाग)

अधिसूचना

शिमला-2, 03 जुलाई, 2014

संख्या: गृह-सी (एफ)10-2/91.—राज्य सरकार यह समीचीन समझती है कि कतिपय स्थानों में अप्राधिकृत व्यक्तियों के प्रवेश को रोकने के लिए पूर्वावधानियां बरती जानी चाहिए :

और भारत सरकार के गृह मंत्रालय ने एस0 ओ0 568 (ई) तारीख 24-09-2074 द्वारा, शासकीय गुप्त बात अधिनियम, 1923 की धारा 2 की उपधारा (8) के खण्ड (ग) और (घ) में विनिर्दिष्ट मामले के सम्बन्ध में केन्द्रीय सरकार के कृत्यों को हिमाचल प्रदेश सरकार को सौंपा है :

अतः हिमाचल प्रदेश की राज्यपाल, शासकीय गुप्त बात अधिनियम, 1923 की धारा 2 की उपधारा (8) के खण्ड (घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, एतद् द्वारा, उक्त अधिनियम के प्रयोजनों हेतु, नीचे दी गई अनुसूची के स्तम्भ (1) में विनिर्दिष्ट स्थान को, इस अधिसूचना के राजपत्र, हिमाचल प्रदेश में प्रकाशन की तारीख से, प्रतिषिद्ध स्थान घोषित करती हैं :—

अनुसूची

स्थान का नाम

परिक्षेत्र और अन्य विवरण

400 / 220 के0 वी0,
जी आई एस,
चमेरा पोलिंग स्टेशन।

गांव व डा0 रजेरा,
जिला चम्बा, हिमाचल प्रदेश
में स्थित।

आदेश द्वारा,
पी0 मित्रा,
मुख्य सचिव।

[Authoritative English text of this Draft Notification No. Home-C (F) 10-2/91, dated as required under Article 348(3) of the Constitution of India.]

DEPARTMENT OF HOME (C-SECTION)

NOTIFICATION

Shimla-2, the 3rd July, 2014

No. Home-C(F)10-2/91.—Whereas the State Government considers it expedient that precautions should be taken to prevent the entry of unauthorized persons into certain places.

And whereas the Government of India, Ministry of Home Affairs, vide S.O. 568 (E) dated 24-09-1974 has entrusted the functions of the Central Government to the Government of Himachal Pradesh in relation to matter specified in clause (C) and (d) of sub-Section (8) of Section 2 of The Indian Official Secrets Act, 1923;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-Section (8) of Section-2 of The Indian Official Secrets Act, 1923, the Governor of Himachal Pradesh hereby declares that place specified in column (1) of the schedule given below to be a prohibited place for the purposes of the said Act with effect from the date of publication of this Notification in the Rajpatra, Himachal Pradesh.

SCHEDULE

Name of Place;
(1)

Locality and other descriptions;
(2)

The 420/220 KV
GIS Chamera Pooling Station.

Situated in VPO Rajera
Distt. Chamba, Himachal Pradesh.

By order,
P. MITRA,
Chief Secretary.

ENVIRONMENT SCIENCE & TECHNOLOGY DEPARTMENT

NOTIFICATION

Shimla-2, the 3rd July, 2014

No. STE-A(1)-4/2001-I –L.—In continuation to this Department Notifications of even number dated 31-12-2012 & 20-05-2013 respectively, the Governor, Himachal Pradesh, in exercise of the powers conferred on her under clause (b) and clause (e) of sub-section (2) of Section 4 of the Water (Prevention and Control of Pollution) Act, 1974 is pleased to nominate the following Members to the H.P. State Pollution Control Board for a period of three year, with immediate effect in public interest.

- | | |
|--|--------|
| 1. The Principal Secretary(Env.S&T) to the Govt. of H.P | Member |
| 2. The Principal Secretary(Finance) to the Govt. of H.P. | Member |

3.	The Principal Secretary(MPP & Power) to the Govt. of H.P	Member
4.	The Principal Secretary(UD) to the Govt. of H.P.	Member
5.	The Principal Secretary(Industries) to the Govt. of HP	Member
6.	The Managing Director, HP Road Transport Corporation Shimla	Member
7.	The Chief Executive Officer(HIMURJA), Shimla	Member

By order,
Sd/-
Principal Secretary.